THE LAW

OF

WORKMEN'S COMPENSATION

THE WORKMEN'S COMPENSATION ACT WITH
DISCUSSION AND ANNOTATIONS
TABLES AND FORMS

BY
SAMUEL A. HARPER, LL.B.
OF THE CHICAGO BAR

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To

JOSEPH C. ADDERLY

PREFACE

When the first edition of this work was brought out in 1914, there were but few decisions from American courts upon the subject of Workmen's Compensation. The Illinois law, however, like other American Workmen's Compensation Acts, contained many provisions which were either identical with, or very similar to, the provisions of the English law, and the English, Irish, Scotch and Canadian cases were, therefore, cited and largely relied upon by the author in construing the provisions of the Illinois Act. Between 1914 and 1920 many new statutes have been adopted by American states, and many decisions of courts of last resort have been recorded, so that the body of American law on the subject of Workmen's Compensation has become comparatively large, most of the usual provisions of these statutes have been considered by the courts and some questions have become definitely settled.

This development of the American law of Workmen's Compensation, together with the very kind reception given by the profession and the courts to the First Edition of the work, constitute the author's apology for this second revised and enlarged edition, which contains references, either in the text or notes, to all the important American decisions down to 1920, as well as the foreign cases cited in the First Edition.

While the Illinois Act is used as a text for the discussion of the various subjects embraced in the broad title of the work, and all important Illinois cases are cited, the constant purpose has been to make the book quite as useful in other states, the important decisions of whose courts have likewise been fully cited, and whose statutes

are very similar, in their more important provisions, to the law of Illinois.

This is an age of digests. The great text writer of a decade ago is an extinct species. This is doubtless due in part to the vast flood of digests with which we have been engulfed, and in part to a waning confidence of courts in the opinions of text-writers. Whatever the cause, the unfortunate result is that we have digests in legion, and we no longer have great text books, and our courts are more likely to cite the American Digest which reasoneth not, than Greenleaf or Story, whose deductions were the steadfast and infallible guide of the preceding generation.

In the preparation of this book a definite attempt has been made on the one hand to avoid the hotch-potch of the modern digest with its glut of undistinguished cases and its jumble of undiscriminated principles; and on the other hand to avoid the old fashioned extensive discussion of the development of the principles of the law as revealed in the adjudicated cases. We have attempted a brief, practical text-book, in deference to unmistakable modern tendencies and opinions, but without surrendering to the all too prevalent lazy habit of merely citing all the undigested cases under convenient general headings, leaving the entire task of synthetic deduction to the reader. We have attempted to state the principles to be deduced from the cases, but without too much argument.

If we have in this way served the profession, we shall feel repaid for our labors.

SAMUEL A. HARPER.

CHICAGO, ILL., JUNE 1, 1920.

ABBREVIATIONS AND REFERENCES

The American State Reports are cited by their usual abbreviations. Other abbreviations used in the citations refer to the following reports, viz.:

N. C. C. A.—Negligence and Compensation Cases Annotated.
B. W. C. C.—Butterworth's Workmen's Compensation Cases.
W. C. C.—Workmen's Compensation Cases.
S. L. R.—Scottish Law Reporter.
K. B.—King's Bench.
C. A.—Chancery Appeals.
L. J. Newsp.—Law Journal Newspaper.
T. L. R.—Times Law Reports.
F.—Session Cases, Fifth Series.
L. T.—Law Times.
Ir. L. T.—Irish Law Times.
Q. B.—Queen's Bench.
I. R.—Irish Reports.
S. C.—Session Cases.
Q. B. D.—Queen's Bench Division.

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THE LAW OF WORKMEN'S COMPENSATION.

Workmen's Compensation

CHAPTER I

DEFINITIONS—HISTORY

§ 1. Definitions. WORKMEN'S COMPENSATION is a system providing for partial, prompt and definite relief against disability or death resulting to workmen from industrial accidents, without regard to questions of negligence, including surgical, hospital and rehabilitation service and payment of benefits based upon a fixed percentage of the workman's earnings at the time of the accident, and is designed primarily to mitigate the economic shock which invariably results from an industrial accident.

In considering the fundamental principles of the system, many of the words used in the above definition have special significance. For example, workmen's compensation is a system providing for "partial" relief. The system never contemplated the payment of damages on account of any liability resulting from negligence and it was, therefore, never intended fully to compensate the injured man or his dependents for the entire financial loss which may have been sustained by reason of the injury.[1]

Under the common law system an injured man (or

[1] In re Dove, 117 N. E. (Ind.) 210; 15 N. C. C. A. 1067.

certain of his dependents) could recover only on proof of fault, and, of course, in such cases he was entitled to estimate all the damages he had sustained from loss of earnings, medical expense, pain and suffering, etc., and, as is well known, a liberal discretion was allowed juries in making awards, so that in many cases verdicts were returned largely in excess of the actual amount of the pecuniary loss.

Also, under the common law system, the number of injured employees or dependents who were successful in recovering damages was comparatively small, approximately 20 per cent, whereas, under the workmen's compensation system every injured workman is paid compensation regardless of questions of fault or negligence, and it is, therefore, very appropriate and proper that the relief afforded should be partial and not complete.

Under the workmen's compensation system, therefore, the employee or his personal representative is no longer able to recover as much as before, but he is entitled to moderate compensation in all cases of injury, and has a certain and speedy remedy without the difficulty and expense of establishing negligence or proving the amount of the damages.

Instead of assuming, as he did at common law, the entire consequences of all ordinary risks of the occupation, he assumes the consequences only in excess of the scheduled compensation, of risks both ordinary and extraordinary.

On the other other hand, the employer is left without defense respecting the question of fault, but he is, at the same time, assured that the recovery is limited, and that it goes directly to the relief of the designated beneficiary. The system takes away the cause of action on the one hand, and the grounds of defense on the other, and merges both in a statutory indemnity fixed and certain.[2]

These important features of the system are emphasized

[2] Grand Trunk Western Ry. Co. v. Industrial Com., 291 Ill. 167.

in the definition by the use of the words "prompt," and "definite."

English and Continental compensation laws provide relief on the basis of 50 per cent of the average earnings of the injured employee at the time of the accident, or for a designated period immediately prior thereto, and this percentage was originally adopted by American compensation laws.

The reason for fixing this percentage, in addition to those already indicated, was that under the common law employers' liability system the statistics compiled at the time the compensation system was first adopted showed that between 40 and 50 per cent of the accidents in industry were due neither to the fault of the employer nor to the fault of the employee; and that the injured workman was able to recover on the ground of the negligence of his employer in from 20 to 25 per cent of the cases; and that the employee himself was guilty of contributory negligence, barring his recovery, in 20 to 25 per cent of the cases.

Students of the question, therefore, in endeavoring to arrive at a just basis for taxing the industry, concluded that inasmuch as the negligence of the employee himself practically offset the negligence of the employer, and that approximately 50 per cent of all accidents were inevitable and due to the fault of no one, the employer should not be charged with more than 50 per cent of the responsibility for industrial accidents, and they therefore based the compensation upon 50 per cent of the employees' earnings.

The latter part of the definition refers to the most important feature of the workmen's compensation plan. In the language of the definition, it is designed primarily to mitigate the economic shock that results from an industrial accident. It should be constantly kept in mind that the first great principle of workmen's compensation is economic, rather than personal, and is especially concerned with the public good as distinguished from the private interests of any single individual.

It is well known that under the common law system,

every industrial accident subjected the community in which it happened to an economic shock of more or less severity, depending upon the circumstances of the accident. As soon as the employee was injured he was, by reason of the accident which injured him, violently disconnected from his employment; the first result, so far as the employer was concerned, was a vacancy in the industrial ranks, which he was obliged to fill.

The next result was that, the employer owing the injured man and his dependents no legal duty in most cases immediately to furnish medical and surgical service for the dependent family, the workman and his family usually became a charge upon the community, and as the public had provided no organized and efficient system for taking care of such cases the injured man and his dependents were put to the humiliation of accepting charitable aid, if indeed they were fortunate enough to be noticed at all by public or private charitable agencies; and while many employers, on broad humanitarian grounds, offered sympathetic assistance, there was, of course, no general or uniform practice in such cases, and even here the injured man felt that he was accepting charity rather than receiving the help to which he was entitled when injured under our present industrial system.

In many cases, the injured man was incapacitated for a long period of time and perhaps permanently, and his only remedy was to institute a lawsuit and share a large proportion of his ultimate recovery with an attorney, and wait months and often years for his money. In the meantime, the economic suffering in his family was inevitable.

Under the workmen's compensation plan, the shock of industrial accidents is reduced to the minimum. When the workman is injured, his employment relation is frequently not terminated, and the interests and obligations of that relation are still maintained to a considerable extent. The employer is obliged immediately to furnish the proper medical, surgical and hospital service, and a certain percentage of the man's wages during the

period of his disability, thus relieving from the effects of the economic disturbance which must, under the common law system, inevitably result. This continuing contact between employer and employee after the injury, results in a more friendly feeling between them, and during the period of incapacity both realize the advantages which will accrue to each in the early return of the injured man to the industrial ranks, and the problem of unemployment resulting from industrial injury is therefore served in a very important way.

§ 2. Historical. Prior to the adoption in America of the workmen's compensation principle of trade risk, as distinguished from the doctrine of negligence or fault, the early legislation upon the subject of employer's liability for personal injuries in master and servant cases was confined to the enactment of safety regulations, insuring greater safety to employees in the operation and management of dangerous machines and appliances, and the modification of the common law defenses of the employer. Many of these statutes expressly gave to the injured workman, or his dependents, a right of action for damages in case of injury resulting by reason of the failure of the employer to comply with safety statutes. Some of them contained provisions restricting the fellow servant class to those employees who were personally associated with one another in the common employment, or, in some instances, to such employees as were engaged in work in the same department of the affected industry; and, again, the burden of proof on the question of contributory negligence in some instances was shifted to the defendant, and in some cases the three so-called common law defenses of fellow servant, assumption of risk and contributory negligence, were specifically abrogated in whole or in part. Especially was this true with reference to mines and railroads.

The trend of this legislation has been to make the master liable for all accidents arising in the business due to the negligence of anyone in the master's service, to shift the burden of proof so as to require the master, where defects existed, to show that there was no negli-

gence, or, in case of contributory negligence, to require the master to show that the injured workman was negligent, and to require all questions of negligence to be left to the jury, to prohibit any contracting out of such liability, etc. The very great uncertainty which has resulted from these widely varied, technical and unscientific statutes, as affecting the rights of both employer and employee in case of accident, has operated to the serious disadvantage of both. Their respective rights and obligations have become matters of opinion and not of certain and predetermined fact.

But in addition to the uncertainties which have resulted from this piece-meal attempt to modify the rules of law, which in the opinion of many are intrinsically and fundamentally wrong, no provision was made, or could be made, on the basis of negligence, for that large class of accidents which inevitably occur in industries conducted under modern conditions, and which are not due to the fault either of the employer or the employee.

Statistics compiled within the last few years show that at least forty per cent of the accidents which occur in industry are due neither to the fault of the employer nor to the negligence of the employee, but to the inevitable and inherent hazard of the trade, or what the French economists call the "*risque professional.*"[3]

This fact being established, it is at once seen that a large element of public interest has been introduced by modern industrial conditions into the general question of accidents in employment cases, which might reasonably give the courts pause before saying that the legislatures might not with propriety declare "that all phases of the premises are withdrawn from private controversy and full and certain relief for workmen injured in extra-hazardous work, and their families and dependents, is hereby provided, regardless of questions of fault,"[4] in which industries so large a proportion of the accidents

[3] 24 Ann. Rep. U. S. Com. of Labor, p. 1137; 92 U. S. Bulletin of Labor, p. 64.

[4] Laws of Washington, 1911, p. 345.

occur without fault. It is obvious that for losses such as these, someone must pay. In the first instance, it is the workman himself. In the long run, however, there is an economic loss which is charged upon the community, and the fundamental principle of workmen's compensation legislation is that the industries shall in the first instance pay for those accidents which inevitably result from the conduct thereof.

The countries of Europe, where the need is less urgent than here, recognized first that the elasticity of the common or civil law was no match for the strain put upon it by the development of modern industry, and, accordingly, they have almost without exception, by workmen's compensation and industrial insurance legislation, struck at the roots of the fundamental doctrine of tort liability in master and servant cases.

England began its legislative changes in the law of employer's liability for damages to injured employees with the Gladstone Act of 1880, since which time the compensation system has been developed by frequent amendments and additions culminating in the act of 1906.[5]

Beginning with the early years of the nineteenth century, the nations of continental Europe began to build up by legislation various systems of workmen's compensation for trade injuries, differing somewhat in their details, but all recognizing, as does the English Act, the principle of trade risk as the only legitimate and sound economic basis for the settlement of injury claims in master and servant cases.

In June, 1910, the state of New York, following the report and recommendation of the state commission authorized by the legislature of that state to study the questions of employer's liability and unemployment, enacted a compulsory workmen's compensation act[6] applying to dangerous trades, and following in part the language of the English Act.

Since this legislation in New York, most of the other

[5] 6 Edw. 7, Chap. 58.

[6] Declared unconstitutional in Ives v. So. Buffalo R. R. Co., 201 N. Y. 271; 1 N. C. C. A. 517.

states in the Union have passed workmen's compensation or industrial insurance laws, widely differing as to details, but all recognizing the fundamental principle of trade risks, and providing compensation for injuries generally without regard to the fault or negligence of the employer or of the injured employee.[7]

§ 3. Constitutional amendments. The following constitutional amendments, designed to authorize workmen's

[7] United States, Chap. 236, Public Acts of 1908 in effect Aug. 1, 1908; Wisconsin, Chap. 50, Laws of 1911 in effect May 3, 1911; Nevada, Chap. 183, Laws of 1911 in effect July 1, 1911; New Jersey, Chap. 95, Laws of 1911 in effect July 4, 1911; California, Chap. 399, Laws of 1911 in effect Sept. 1, 1911; Washington, Chap. 74, Laws of 1911 in effect Oct. 1, 1911; Kansas, Chap. 218, Laws of 1911 in effect Jan. 1, 1912; New Hampshire, Chap. 163, Laws of 1911 in effect Jan. 1, 1912; Ohio, S. B. 127, Acts of 1911 in effect Jan. 1, 1912; Illinois, S. B. 283, Acts of 1911 in effect May 1, 1912; Massachusetts, Chap. 751, Acts of 1911 in effect July 1, 1912; Michigan, Act 10, Extra Session 1912 in effect Sept. 1, 1912; Arizona, Chap. 14, Laws of 1912 in effect Sept. 1, 1912; Rhode Island, Chap. 831, Laws of 1912 in effect Oct. 1, 1912; Texas, Chap. 179, Laws of 1913 in effect Sept. 1, 1913; West Virginia, Chap. 10, Laws of 1913 in effect Oct. 1, 1913; Minnesota, Chap. 467, Acts of 1913 in effect Oct. 1, 1913; Connecticut, Chap. 138, Laws of 1913 in effect Jan. 1, 1914; Oregon, Chap. 112, Laws of 1913 in effect July 1, 1914; Iowa, Chap. 147, Acts of 1913 in effect July 1, 1914; New York, Chap. 816, Laws 1913; Chap. 41, Laws 1914 in effect July 1, 1914; Maryland, Chap. 800, Laws of 1914 in effect Nov. 1, 1914; Nebraska, Chap. 198, Laws of 1913 in effect Dec. 1, 1914; Louisiana, Act 20, Acts of 1914 in effect Jan. 1, 1915; Wyoming, Chap. 124, Laws of 1915 in effect April 1, 1915; Montana, Chap. 96, Laws of 1915 in effect July 1, 1915; Vermont, Chap. 164, Acts of 1915 in effect July 1, 1915; Hawaii, Act 221, Acts of 1915 in effect July 1, 1915; Alaska, Chap. 71, Laws of 1915 in effect July 28, 1915; Colorado, Chap. 179, Laws of 1915 in effect Aug. 1, 1915; Indiana, Chap. 105, Laws of 1915 in effect Sept. 1, 1915; Oklahoma, Chap. 246, Laws of 1915 in effect Sept. 1, 1915; Maine, Chap. 295, Laws of 1915 in effect Jan. 1, 1916; Pennsylvania, Act 338, Acts of 1915 in effect Jan. 1, 1916; Porto Rico, Act 19, Acts of 1916 in effect July 1, 1916; Kentucky, Chap. 33, Laws of 1916 in effect Aug. 1, 1916; New Mexico, Chap. 83, Laws of 1917 in effect March 13, 1917; South Dakota, Chap. 376, Laws of 1917 in effect July 1, 1917; Utah, Chap. 100, Laws of 1917 in effect July 1, 1917; Idaho, Chap. 81, Laws of 1917 in effect Jan. 1, 1918; Delaware, Chap. 233, Laws of 1917 in effect Jan. 1, 1918; Virginia, Chap. 400, Laws of 1918 in effect Jan. 1, 1919; North Dakota, Chap. 162, Laws of 1919 in effect July 1, 1919; Tennessee, Chap. 123, Laws of 1919 in effect July 1, 1919; Missouri, S. B. 389, Laws of 1919 in effect Nov. 1, 1919. (To be voted upon under a referendum, November, 1920, election.) Alabama, S. B. 53, Acts of 1919 in effect Jan. 1, 1920.

compensation legislation have been adopted in Ohio, Arizona, California, New York and Vermont:

Vermont: "The general assembly may pass laws compelling compensation for injuries received by employees in the course of their employment resulting in death or bodily hurt, for the benefit of such employees, their widows or next of kin. It may designate the class or classes of employers and employees to which such laws shall apply."

California: "The legislature may by appropriate legislation create and enforce a liability on the part of all employers to compensate their employees for any injury incurred by the said employees in the course of their employment, irrespective of the fault of either party. The legislature may provide for the settlement of any disputes arising under the legislation contemplated by this section, by arbitration, or by an industrial accident board, by the courts, or by either any or all of these agencies, anything in this constitution to the contrary notwithstanding."

New York: "Nothing contained in this constitution shall be construed to limit the power of the legislature to enact laws for the protection of the lives, health or safety of employees; or for the payment, either by employers, or by employers and employees or otherwise, either directly or through a state or other system of insurance or otherwise, of compensation for injuries to employees or for death of employees resulting from such injuries without regard to fault as a cause thereof, except where the injury is occasioned by the willful intention of the injured employee to bring about the injury or death of himself or of another, or where the injury results solely from the intoxication of the injured employee while on duty; or for adjustment, determination, and settlement, with or without trial by jury, of the issues which may arise under such legislation; or to provide that the right to such compensation, and the remedy therefor shall be exclusive of all other rights and remedies for injuries to employees or for death resulting from such injuries; or to provide that the amount of such compensation for

death shall not exceed a fixed or determinable sum; provided that all moneys paid by an employer to his employees or their legal representatives, by reason of the enactment of any of the laws herein authorized, shall be held to be a proper charge in the cost of operating the business of the employer."

Ohio: "For the purpose of providing compensation to workmen and their dependents, for death, injuries or occupational diseases, occasioned in the course of such workmen's employment, laws may be passed establishing a state fund to be created by compulsory contribution thereto by employers, and administered by the state determining the terms and conditions upon which payment shall be made therefrom, and taking away any or all rights of action or defenses from employees and employers, but no right of action shall be taken away from any employee when the injury, disease or death arises from failure of employer to comply with any lawful requirement for the protection of the lives, health and safety of employees. Laws may be passed establishing a board which may be empowered to classify all occupations, according to their degree of hazard, to fix rates of contribution to such fund according to such classification and to collect, administer and distribute such fund, and to determine all rights of claimants thereto."

Arizona: "The legislature shall enact a workmen's compulsory compensation law applicable to workmen engaged in manual or mechanical labor in such employments as the legislature may determine to be especially dangerous, by which compulsory compensation shall be required to be paid to any such workman by his employer, if in the course of such employment personal injury to any such workman from any accident arising out of, and in the course of, such employment is caused in whole, or in part, or is contributed to, by a necessary risk or danger of such employment, or a necessary risk or danger inherent in the nature thereof, or by failure of such employer, or any of his or its officers, agents, or employee, or employees, to exercise due care, or to comply with any law affecting such employment; Provided, that it shall

be optional with said employee to settle for such compensation, or retain the right to sue said employer as provided by this constitution."

§ 4. Federal legislation. Congress passed an act, approved May 30, 1908, which provides that any person employed by the United States as an artizan or laborer in any of its manufacturing establishments, arsenals, or navy yards, or in the construction of river and harbor or fortification work or in hazardous employment on construction work in the reclamation of arid lands or the management and control of the same, or in hazardous employment under the Isthmian Canal Commission, who is injured in the course of such employment shall be entitled to receive one year's wages, unless in the opinion of the Secretary of Commerce and Labor, such employee is sooner able to return to work. It provides that no compensation shall be paid where the injury is due to negligence or misconduct of the employee, nor unless the injury shall continue for more than fifteen days. In case of death of the employee during the year, the balance due, shall be paid to the widow and children, and if the widow die, her share shall be paid to the children. Reports of accidents are required, and affidavit of claim to be filed with the Secretary of Commerce and Labor within ninety days. A physical examination may be required by the Secretary, at least once in six months.

Since its passage this law has been amended, extending its application to mines, forestry and the lighthouse service, and so far as it affects employees on the Isthmus of Panama, jurisdiction is now conferred upon the Chairman of the Canal Commission.[8]

Several bills have been introduced in Congress for compensation laws, applicable to employees on railroads engaged in interstate commerce and also bills which would include within their scope all civilian employees of the United States, but thus far no bill of this sort has become a law.

[8] 35 U. S. Stat. L., Chap. 236, p. 556.

§ 5. The new system of employer's liability. While the changes made in the Fundamental principles of the law of employers' liability, by the enactment of Workmen's Compensation Laws seem radical to those unfamiliar with the history of this branch of the law,[9] an enquiry into the industrial conditions which immediately preceded the enactment of these laws makes them appear less revolutionary in character. There is probably no other instance in the history of the law or in the history of economics where a system of law has been required in a comparatively short time to meet so radical a change in the conditions which it was designed to serve. The discovery of steam and electricity as active agents in the carrying on of the business of transportation, and the vast manufacturing industries which the last century has developed have necessarily brought large numbers of persons together under one management, combining their efforts toward some common end. In the earlier days these people had worked singly or in small groups at their benches or in their shops, with hand-driven or other simple machinery. Their occupations were not usually hazardous, and what dangers existed were obvious to the most unthinking. Each man, if he depended upon his coworker in any way for safety or assistance, depended upon him to perform a simple duty, or to do a plain job. The carpenter employed a man or two, the blacksmith had a helper, and the shoemaker an apprentice. As we know it today, there was practically no division of labor. The vital interdependence of workmen, which we now find everywhere in modern factories or railway systems was unthought of. Accidents were necessarily infrequent, and when they did occur, the facts surrounding the accident were well known to the few employees and their employer, and there was a general feeling of sympathy and brotherhood which the general extent and complexity of our present industrial system makes entirely impossible. Men worked usually with their own simple tools, and

[9] Ives v. South Buffalo Ry. Co., 201 N. Y. 271; 1 N. C. C. A. 517; 94 N. E. 431.

besides their own familiar friends, whose general qualities for efficiency and care were well known. But since those early days conditions have radically and rapidly changed. Where girls spun their flax and wove their linen at their homes, they are now gathered in the factories and woolen mills by the hundreds and taught to manage power-driven machinery, the most careful use of which is bound to result at more or less regular intervals in personal injury to the operatives. The simple carpenter has developed into a large contractor, engaged in erecting steel and stone buildings of large proportions, employing many men with whom he has no personal acquaintance. In like manner the simple blacksmith shop has grown to be a large foundry or mechanical establishment in which the simple forge has been replaced by blast furnaces and other dangerous manufacturing machines and devices. The simple shoemaker has left his last, and lost his identity by joining the ranks of the large army of workmen engaged in the manufacture of boots and shoes by machinery.

The mere recital of these radical changes in our industrial conditions is sufficient in itself to call to mind the urgent need for some change in the law as to the liability of the master for injuries to his servant.

It is obvious that for losses occuring through industrial accidents, some one must pay. Prior to the adoption of workmen's compensation laws, it was in the first instance the workman himself,[10] because, as already pointed out, the larger proportion of such accidents were attributable to the fault of no one. In the long run, however, there was an economic loss that was charged upon the community, and this was the accompaniment of an individual hardship of a peculiarly distressing nature. While fire, deterioration of plant and financial loss were insured against, and the insurance, whatever form it took, was charged to the cost of production, no account was taken of the deterioration of the human machine.[11]

[10] Western Indemnity Co. v. Pillsbury, 170 Cal. 686; 10 N. C. C. A. 1.

[11] 18 Green Bag, 189; Duluth Brewing and Malting Co. v. District Court, 129 Minn. 176; 15 N. C. C. A. 274.

Once awakened to the injustice of this situation the American states wisely chose to follow the European example and make some effort to devise a plan by which the inevitable losses arising from the inherent risks of trade should fall, in large part, upon the consumer of the commodity, the manufacture of which had demanded the sacrifice. It has therefore come to pass that between the years 1910 and 1920 there have been enacted workmen's compensation and industrial insurance laws in forty-two states and three territories. In addition there is a federal law applying to civil employees of the United States government and of the Panama Canal, the Panama Railroad Company, and the Alaska Engineering Commission, besides the soldiers and sailors compensation law, and the Philippine law for the compensation of injured employees of the insular government.[12]

[12] *Ante;* p. 10; see also Mackin v. Detroit-Timkin Axle Co., 187 Mich. 8; 16 N. C. C. A. 745; Lewis & Clark County v. Industrial Accident Bd., 56 Mont. 2; 155 Pac. 268; 14 N. C. C. A. 937.

THE ILLINOIS WORKMEN'S COMPENSATION ACT OF 1919, WITH DISCUSSION AND ANNOTATIONS

CHAPTER II

ELECTION—ACCIDENTAL INJURIES—SCOPE OF EMPLOYMENT, ETC.

AN ACT *to promote the general welfare of the people of this State by providing compensation for accidental injuries or death suffered in the course of employment within this State; providing for the enforcement and administering thereof, and a penalty for its violation, and repealing an Act entitled, "An Act to promote the general welfare of the people of this State by providing compensation for accidental injuries or death suffered in the course of employment," approved June 10, 1911, in force May 1, 1912,* [*Approved June 28, 1913, in force July 1, 1913, with amendments in force July 1, 1919.*

§ 1. That an employer in this State, who does not come within the classes enumerated by section three (3) of this Act, may elect to provide and pay compensation for accidental injuries sustained by any employee arising out of and in the course of the employment according to the provisions of this Act, and thereby relieve himself from any liability for the recovery of damages, except as herein provided.

(a) Election by any employer to provide and pay compensation according to the provisions of

Sec. 1 of the Illinois Act

this Act shall be made by the employer filing notice of such election with the Industrial Board.

(b) Every employer within the provisions of this Act who has elected to provided [provide] and pay compensation according to the provisions of this Act, shall be bound thereby as to all his employees covered by this Act until January 1st of the next succeeding year and for terms of each year thereafter: "*Provided,* any such employer who may have once elected, may elect not to provide and pay the compensation herein provided for accidents resulting in either injury or death and occurring after the expiration of any such calendar year by filing notice of such election with the Industrial Board at least sixty days prior to the expiration of any such calendar year, and by posting such notice at a conspicuous place in the plant, shop, office, room or place where such employee is employed, or by personal service, in written or printed form, upon such employee, at least sixty (60) days prior to the expiration of any such calendar year.

(c) In the event any employer mentioned in this section, elects to provide and pay the compensation provided in this Act, then every employee of such employer, as a part of his contract of hiring or who may be employed at the time of the taking effect of this Act and the acceptance of its provisions by such employer, shall be deemed to have accepted all the provisions of this Act and shall be bound thereby unless within thirty (30) days after such hiring or after the taking effect of this Act, and its acceptance by such employee, he shall file a notice to the contrary with the Industrial Board, whose duty it shall be to immediately notify the employer, and until such notice to the contrary is given to the employer, the measure of liability of such employer shall be determined according to the compensation provisions of this Act: *Provided, however,* that any employee may withdraw

Sec. 1 of the Illinois Act

from the operation of this Act upon filing a written notice of withdrawal at least ten (10) days prior to January 1st of any year with the Industrial Board, whose duty it shall be to immediately notify such employer by registered mail, and, until such notice to the contrary is given to such employer, the measure of liability of such employer shall be determined according to the compensation provisions of this Act.

(d) Any such employer or employee may, without prejudice to any existing right or claim, withdraw his election to reject this Act by giving thirty (30) days' written notice in such manner and form as may be provided by the Industrial Board. [Amended by Act approved June 25, 1917.

§ 6. Elective features of the act. The Illinois Compensation Act is compulsory and takes effect automatically without election as to certain extra-hazardous industries enumerated in Section 3 of the Act,[1] and elective as to all other industries, as provided in the first section of the Act.

§ 7. Constitutionality of elective acts. Although elective compensation laws have been frequently attacked in the courts on the ground that they deprive the injured man and his dependents of the right of trial by jury, that they seek to confer judicial powers upon administrative bodies, that they violate the "due process" clause of the constitution, that the classification of industries is arbitrary and unreasonable, that they deprive employers of common law defenses, and for many other reasons, they very generally have been upheld by both Federal and State courts.[2]

[1] *Post*, p. 134.

[2] Hawkins v. Bleakly, 243 U. S. 210, affirming 220 Fed. 378, 13 N. C. C. A. 959; Deibeikis v. Link Belt Co., 261 Ill. 454, 5 N. C. C. A. 401; Crooks v. Tazewell Coal Co., 263 Ill. 343, 5 N. C. C. A. 410; Dietz v. Big Muddy Coal Co., 263 Ill. 480, 5 N. C. C. A. 419; Casparis v. Industrial Board, 278 Ill. 77, 15 N. C. C. A. 388, 390; Keeran v. P. B. & C. Traction Co., 277 Ill. 413, 14 N. C.

The Illinois Act of 1913 was wholly elective, containing no compulsory features except those which resulted from the provision, common in most elective acts, that the ordinary common law defenses of assumed risk, negligence of a fellow servant and contributory negligence were abolished as to those employers in the effected industries, who should reject the law. The courts have uniformly held that these defenses, being merely common law rules, may be abolished by the legislature, in its discretion.[3]

C. A. 909; VonBoeckmann v. Corn Products Co., 274 Ill. 605; Victor Chemical Works v. Industrial Board, 274 Ill. 11, 13 N. C. C. A. 552; Chicago Rys. Co. v. Industrial Board, 276 Ill. 112, 15 N. C. C. A. 154; Hunter v. Colfax Consolidated Coal Co., 154 N. W. 1037, 157 N. W. 145, 11 N. C. C. A. 636, 886; (Iowa) Shade v. Ash Grove Lime & Cement Co., (Kan.) 144 Pac. 249, 92 Kan. 146, 5 N. C. C. A. 763; Hovis v. Cudahy Rfg. Co., 148 Pac. (Kan.) 626; Swader v. Kansas Flour Mills, 176 Pac. (Kan.) 143; Green v. Caldwell, 186 S. W. (Ky.) 648, 12 N. C. C. A. 520, 13 N. C. C. A. 545; Day v. Louisiana Central Lumber Co., 81 So. (La.) 328; Mailman v. Record Foundry & Machine Co., 100 Atl. (Me.) 606; Fish's Case, 107 Atl. (Me.) 32; Solvuca v. Ryan & Reilly Co. (Md.), 101 Atl. 710, 17 N. C. C. A. 477; Opinions of Justices, 209 Mass. 607, 1 N. C. C. A. 557; Young v. Duncan (Mass.), 106 N. E. 1; Duart v. Simmons, 121 N. E. 10; Mackin v. Detroit-Timkin Axle Co., 187 Mich. 8, 16 N. C. C. A. 745; Wood v. City of Detroit (Mich.), 155 N. W. 592; Matheson v. Minneapolis St. Ry. Co., 126 Minn. 286, 5 N. C. C. A. 871; State v. District Court of Meeker Co., 150 N. W. (Minn.) 623; Lindstrom v. Mutual S. S. Co., 156 N. W. 669; State ex rel. London & Lancashire Ind. Co. v. District Court of Hennepin Co., 166 N. W. (Minn.) 772; Lewis & Clark County v. Industrial Accident Board, 52 Mont. 6, 14 N. C. C. A. 938; U. S. Fidelity & Guaranty Co. v. Wickline, 170 N. W. 193, (Neb.) 17 N. C. C. A. 1065; Nevada Industrial Commission v. Washoe County, 171 Pac. (Nev.) 511; Sexton v. Newark Dist. Tel. Co., 84 N. J. L. 85, 9, Atl. 1070, 3 N. C. C. A. 569; Huyett v. Penna. Ry. Co., 92 Atl. (N. J.) 58; Brost v. Whitall Tatum Co., 99 Atl. (N. J.) 315; Evanoff v. State Industrial Accident Com., 154 Pac. (Ore.) 106; Anderson v. Carnegie Steel Co., 99 Atl. (Pa.) 215; Sayles v. Foley, 96 Atl. (R. I.) 340, 12 N. C. C. A. 949; Middleton v. Texas Power & Light Co., 11 N. C. C. A. 873, 12 N. C. C. A. 949; DeFrancesco v. Piney Mining Co., 86 S. E. (W. Va.) 777, 10 N. C. C. A. 1015; Watts v. Ohio Valley Electric Co., 88 S. E. (W. Va.) 659; Rhodes v. J. B. B. Coal Co., 90 S. E. (W. Va.) 796; Borgnis v. Falk, 147 Wis. 327, 3 N. C. C. A. 649; Johnson v. Kennecott Copper Corp., 5 Alaska 571, 248 Fed. 407.

[3] Deibeikis v. Link Belt Co., 261 Ill. 454, 5 N. C. C. A. 401; Opinion of Justices, 209 Mass. 607, 1 N. C. C. A. 557; Anderson v. Carnegie Steel Co., 99 Atl. (Pa.) 215; N. Y. Cent. Ry. Co. v. White, 243 U. S. 247, 13 N. C. C. A. 943; Borgnis v. Falk, 147 Wis. 327, 2 N. C. C. A. 834; State v. Creamer, 85 O. St. 349, 1 N. C. C. A. 30; Cunningham v. N. W. Improvement Co., 44 Mont. 180, 1 N. C. C. A. 720; Sexton v.

The Supreme Court of Illinois, in Deibeikis v. Link Belt Co.[4] in discussing this feature of the Illinois law said: "To deprive an employer under such circumstances of the right to assert these defenses, is not an exercise of the police power, but is merely a declaration by the legislature of the public policy of the State in that regard. The right of the legislature to abolish these defenses cannot be seriously questioned. The rules of law relating to the defenses of contributory negligence, assumption of risk, and the effect of negligence of a fellow servant were established by the courts and not by our constitution, and the legislature may modify them or abolish them entirely, if it sees fit to do so."

One of the earliest cases in which this right of the legislature to abolish common law defenses as a part of the plan of a workmen's compensation law, was presented to the Supreme Court of Massachusetts. In passing upon the elective feature of the Massachusetts Act, which included a provision abolishing these so-called defenses where the employer who was made subject to the Act, rejected its provisions, the Supreme Court of that State said:

"The rest of the Act deals mainly with a scheme providing, through the instrumentality of a corporation established for that purpose entitled the Massachusetts Employees' Insurance Association, and the subscription of employers thereto for compensation to employees for personal injuries received by them in the course of their employment, and not due to serious and wilful misconduct on their part. *There is nothing in the Act which compels an employer to become a subscriber to the Association, or which compels an employee to waive his right of action at common law,* and accept the compensation provided for in the Act. In this respect the Act differs wholly, so far as the employer is concerned from the New York statute above referred to. By subscribing to the Association, an employer voluntarily agrees to be

Newark Dist. Tel. Co., 84 N. J. L. 85, 3 N. C. C. A. 569; see also authorities cited *ante*, n. 2.

[4] 261 Ill. 454, 5 N. C. C. A. 401.

bound by the provisions of the Act. The same is true of an employee who does not choose to stand upon his common law rights. An employer who does not subscribe to the Association will no longer have the right in an action by his employee against him at common law, to set up the defense of contributory negligence or assumption of risk, or to show that the injury was caused by the negligence of a fellow servant. In the case of an employee who does not accept the compensation provided for by the Act and whose employer had become a subscriber to the Association, an action can no longer be maintained for death under the Employer's Liability Act. *But these considerations do not constitute legal compulsion or a deprivation of fundamental rights.*"[5]

The elective provisions of the Wisconsin Compensation Act[6] were substantially those of the earlier Illinois Act. The Supreme Court of Wisconsin in answering the objection that the plan was practically coercive, and therefore violative of fundamental rights, said: "As to the employer, the argument is that the abolition of the two defenses is a club which forces him to accept; and as to the employee, the argument is that if his employer accepts the law the employee will feel compelled to accept it also through fear of discharge if he does not accept." Both of these arguments are based upon conjecture. Laws cannot be set aside upon mere speculation or conjecture. The court must be able to say with certainty that an unlawful result will follow. We do not see how any such thing can be said here. No one can say with certainty what results will follow in the practical workings of the law. It may well be that many manufacturers, especially those employing small numbers of employees and in the less dangerous trades, will deliberately conclude that it will be better business policy to exercise greater care in guarding their employees from possible danger and greater discrimination in the employment of careful men, and reject the law entirely, running the risk of being able to prevent all or nearly all accidents. It seems extremely

[5] Opinion of the Justices, 209 Mass. 607, 1 N. C. C. A. 557.

[6] Laws, 1911, Chap. 50.

probable that the great bulk of workmen, especially of the unskilled classes, will be glad to come under the Act and thus secure a certain compensation in case of injury, in place of that very uncertain and expensive thing, namely, the final result of a lawsuit; but whether this be so or not, it may be considered as reasonably certain that very many will elect to come under the Act voluntarily and freely, and that those who do not, will probably come from the ranks of skilled labor, who will deem the rates of compensation under the law as entirely inadequate, or will be careful workmen in the less dangerous trades, who will see no gain in bartering their common law rights for the restricted remedies furnished by the statute. It cannot be said with any certainty that such men will be discharged for their failure to voluntarily come under the law. The probability would seem rather to be that they would be of a class which the employer would wish to keep in his employ, notwithstanding their attitude toward the law. These matters are, however, purely speculative and conjectural. None can say what the practical operation of the law will be. It is enough for our present purpose that no one can say with certainty that it will operate to coerce either employer or employee."[7]

That no one has a vested right in the rules of the common law, seems to be established beyond controversy. The common law defenses of fellow servant, assumption of risk and contributory negligence had been largely limited and in some cases entirely abrogated in many American states prior to the adoption of workmen's compensation laws and such legislation has been uniformly sustained.[8] In the language of the Supreme Court of Nebraska "it is sufficient to say that no respectable authority will be found to the effect that a mere right to sue for a tort is, previous to the commencement of a suit, a vested right which the legislature cannot disturb."[9] It

[7] Borgnis v. Falk Co., 147 Wis. 327, 2 N. C. C. A. 834.

[8] Munn v. Illinois, 94 U. S. 113; Sharp v. Sharp, 213 Ill. 336, 8 Ill. Notes, p. 578, § 173; People v. Binns, 192 Ill. 68, 71, 8 Ill. Notes, p. 30, § 41; City of Chicago v. Sturges, 222 U. S. 313; Second Employers' Lia. Cases, 223 U. S. 1, 50.

[9] Bennett v. Hargus, 1 Neb. 419.

is, of course, clear that if the legislature may abolish the usual common law defenses in all cases, it may abolish them in some cases, namely, when the employer elects not to provide and pay a reasonable statutory compensation for accidental injuries occurring in an industry conducted by him.

§ 8. Voluntary election in non-hazardous industries. The present Illinois Act, however, does not contain the coercive provisions abolishing the so-called common law defenses. The law is compulsory as to a defined classification of hazardous industries enumerated in Section 3, and is purely voluntary, with no coercive provisions as to all other industries. This change in the law is a radical departure in principle, inasmuch as the act in its present form is based squarely upon the police power of the State, so far as hazardous industries are concerned, and as to such trades is no longer a matter of mere contract growing out of a method of election prescribed by the Act. As to employments not classified as hazardous, the employer and his employees are given an opportunity, at their option, to substitute the compensation rights and liabilities for the old common law rights and liabilities, and to be governed in their employment relation, so far as industrial accidents are concerned, by the same rules of law applicable to hazardous industries. Election by the employer is made by his filing notice of such election with the Industrial Commission, the agency which is charged with the duty of administering the Act. When the employer so elects, he is bound by such election as to all his employees until January first of the next succeeding year, and for terms of each year thereafter, until such time as he elects, in the manner provided in the Act, not to pay compensation as therein required. The inducement offered to the employer who does not fall within the hazardous classification of the Act, to accept its provisions, and be governed thereby, is that by so doing he "may relieve himself from any liability for the recovery of damages" at common law.

§ 9. Period covered by employer's election. Subdivision (b) of Section 1 provides that "every employer

* * * who has elected to provide and pay compensation * * * shall be bound thereby as to all his employees covered by this Act, until January 1st of the next succeeding year, and for terms of each year thereafter." Having once elected to accept the Act, he may withdraw from it by taking two necessary steps provided by the statute:

1. Filing notice with the Industrial Commission; and
2. Posting notice "at a conspicuous place in the plant, shop, office, room, or place where such employee is employed, or by personal service, in written or printed form;" such notices to be filed and posted, in the manner fixed by the statute within at least sixty days prior to the expiration of any calendar year.

Undoubtedly this provision would apply to all employers who had actually filed notice with the Industrial Commission of their election to be bound by the act. Any employer who had filed notice of his election to come within the provisions of the act could only withdraw from the same by filing a notice sixty days before the first of January in some succeeding year.[10]

It is obvious also that filing of notice with the Commission alone would not be sufficient, nor posting, or service of personal notice alone, and that therefore unless both notices were given in accordance with the statute, and within sixty days prior to January first of any year, the employer would be bound by the Act for the following year. And it has been held that an allegation that an employer was not operating under the Act is not proved in an action at law by an employee where he merely introduces in evidence a notice signed by the President and Secretary of the defendant, addressed to the Industrial Commission, but no evidence was offered to show that a copy of such notice was either furnished to the plaintiff, or posted at the place where he was employed.[11]

[10] Victor Chemical Works v. Industrial Board, 274 Ill. 11, 13 N. C. C. A. 552.

[11] Beveridge v. Illinois Fuel Company, 283 Ill. 31, 17 N. C. C. A. 463; see also Curran v. Wells Bros. Co., 205 Ill. App. 307, 17 N. C. C. A. 470; Garrett v. Anglo-American Provision Co., 205 Ill. App. 411, 17 N. C. C. A. 470; Rice v. Garrett, 194 S. W. (Tex.) 667, 17 N. C. C. A. 466.

§ 10. Strict compliance with statute necessary. Inasmuch as the employee's common law right of action for damages is taken away by the employer's election to operate under the Act, the provisions of the Act with reference to the manner of election should be strictly construed against the employer, and he should either be able to show a strict compliance with the statute, or that the employee has in effect accepted the Act, by waiving such compliance on the part of the employer.[12] The necessity for such strict construction is further emphasized by the fact that whether the employment relation shall be governed by the Act, is practically left to the exclusive discretion of the employer.[13]

It has therefore been held that where the statute required notice of election to be both filed with the Industrial Commission and posted, failure to post the notice was not to be excused because of the fact that the injured workman was a foreigner who could not read the notice printed in the English language.[14] In its present form, however, the Illinois act requires filing and posting of the notice by the employer of his election to be bound by the Act, but nevertheless the requirement is a statutory one, vitally effecting the rights of the employees with reference to a matter about which they have little or no choice, and the requirements of the act should therefore be strictly complied with by the employer.[15] The Illinois Supreme Court has said that it could hardly be that filing the written notice with the Industrial Commission would be effectual without any notice to the employee, to give the employee the right to maintain an action at law for damages, on the ground that the employer had elected

[12] Kampman v. Cross, 194 S. W. (Tex.) 437, 17 N. C. C. A. 465; Rice v. Garrett, 194 S. W. (Tex.) 667, 17 N. C. C. A. 466; Great Northern Railway Co. v. King, 165 Wis. 159, 17 N. C. C. A. 465; Daniels v. Chas. Boldt Co., 78 W. Va. 124, 17 N. C. C. A. 472.

[13] Dietz v. Big Muddy Coal & Iron Co., 263 Ill. 480, 5 N. C. C. A. 419.

[14] Paucher v. Enterprise Coal Min. Co., 164 N. W. (Iowa) 1035, 17 N. C. C. A. 469.

[15] Reynolds v. C. C. Ry. Co., 287 Ill. 124; typewritten signature to notice is sufficient compliance with the statute: Willett Co. v. Industrial Co., 287 Ill. 487.

not to be bound by the Act, and at the same time, if the employee had sought to enforce the payment of compensation under the statute, the employer could not defeat its liability thereunder on the ground that it had elected not to be bound by the Act, and whether the burden of proving an election not to be bound by the statute is upon the employee or the employer, it must be proved that the requirements of the statute for making such election have been complied with.[16] Whether the required notice has been given or not has been held to be immaterial, however, in an action at law brought by the employee against the employer, where it appeared that the employee had prosecuted a claim for compensation under the Act to final adjudication.[17]

§ 11. Acceptance in one industry as including another. It is of course obvious that under the elective provisions of the present Illinois Act, an employer who may be engaged in more than one enterprise, may accept the terms of the Act as to one and not as to the other. In cases where the Act is compulsory, and the employer is automatically brought within its terms as to one hazardous industry carried on by him, it has been held that other non-hazardous industries conducted by him were not effected, unless by express election he brought them within the terms of the law,[17a] because the law, in this respect, has reference to the business and not the person of the employer.[18] Under the present Illinois Act, therefore, in non-hazardous industries, it is optional with the employer as to what industries shall be brought within the terms of the law, and his acceptance, as an employer, of the terms of the Act as to employees engaged in one industry, will not bring other employees under the law

[16] Barnes v. Illinois Fuel Co., 283 Ill. 173, 17 N. C. C. A. 478; Davis v. St. Paul Coal Co., 286 Ill. 64.

[17] Texas Refining Co. v. Alexander, 202 S. W. (Tex.) 131, 17 N. C. C. A. 471.

[17a] Vaughan's Seed Store v. Simonini, 275 Ill. 477, 14 N. C. C. A. 1075; Fruit v. Industrial Board, 284 Ill. 154, 16 N. C. C. A. 685; Hochspeier v. Industrial Board, 278 Ill. 523, 16 N. C. C. A. 665.

[18] Vaughan's Seed Store v. Simonini, 275 Ill. 447, 14 N. C. C. A. 1075.

if they are employed in some other industry as to which the employer has made no election to come under the Act. It necessarily follows that an insurance contract covering the employer's liability for workmen's compensation in certain enumerated operations, will not protect employees of the same employer engaged in some other operations or industries which have not been brought within the Compensation Act by the election of the employer.[19]

§ 12. Election by employee. Subdivision (c) of Section 1 provides for the method of election by the employee. Election to accept the provisions of the Act and to be governed by it is first extended by the statute to the employer, and the employee is given no opportunity for election until the employer has signified his intention with reference to the Act. If, therefore, an employee wishes to secure the benefits of the Act, with reference to accidental injuries which he may suffer, he is obliged to seek the employment of some employer who has accepted the Act and is conducting his business under it.[20] This primary right of election is extended to the employer obviously upon the theory that he should, in the first instance, be given the right to determine so far as possible what the policy of his business should be, with reference to industrial accidents and the method of compensation. No questions of election on the part of employees can therefore arise in any industry until after the employer has exercised his option.[21]

It was manifestly not the intention of the legislature to put it in the power of the employee to compel the employer to adopt the Act without regard to the employer's own wishes in the matter. There is no provision in the Act conferring upon the employee the right to elect to

[19] Kauri v. Messner, 198 Mich. 126, 17 N. C. C. A. 467; Anderson v. McVannel, 201 Mich. 29, 17 N. C. C. A. 467; Bayer v. Bayer, 191 Mich. 423, 17 N. C. C. A. 467.

[20] Balen v. Colfax Consolidated Coal Co., 168 N. W. (Ia.) 246, 17 N. C. C. A. 512.

[21] Dietz v. Big Muddy Coal & Iron Co., 263 Ill. 480, 5 N. C. C. A. 419; Bendykson v. Lyons, 161 N. W. (Mich.) 945, 16 N. C. C. A. 744.

be governed by the Act in his relations to an employer who has rejected the Act.[22]

The employee is presumed to have elected to accept the Act, unless within thirty days after the hiring, or after the acceptance of the Act by the employer, he, the employee, files notice to the contrary with the Industrial Commission.[23] Under a similar provision the Industrial Accident Board of California has held that until the expiration of the thirty days, the employee is not covered by the Act.[24] This presumption of election to accept the Act may therefore be imposed upon his employees by any employer in this state engaged in carrying on any business which he brings within the Act by election, but the employee cannot be under the Act while the employer is not under it.[25] The privilege is extended to any employee, however, of rejecting the Act in any case, by filing notice within thirty days of the date of employment, or of acceptance of the Act by the employer, with the Industrial Commission, whose duty in such case shall be immediately to notify the employer of such notice of rejection, and when so notified, the employer shall retain all his common law defenses in any action brought against him for damages growing out of personal injuries sustained by any such employee. The employee is also given the right to withdraw from the operation of the Act, after having once elected to be governed by it, by filing written notice of withdrawal with the Industrial Commission ten days prior to any January first, in which case the employer becomes reinvested with all his common law defenses to any suit for damages for personal injury brought by such employee.

Either employer or employee, having rejected the Act, may withdraw their rejection, and accept the Act, by

[22] Dietz v. Big Muddy Coal & Iron Co., 263 Ill. 480, 5 N. C. C. A. 419.

[23] Great Northern Ry. Co. v. King, 161 N. W. (Wis.) 371, 17 N. C. C. A. 465, 480.

[24] McAvin v. City Electric Co., Case No. 1, March 8, 1912; Wiesedippe v. Zweifel, 160 N. W. (Wis.) 1038.

[25] Means v. Terminal Railroad Assn., 202 Ill. App. 591, 17 N. C. C. A. 470; Dietz v. Big Muddy Coal & Iron Co., 263 Ill. 480, 5 N. C. C. A. 419.

giving thirty days' written notice, in such manner and form as may be provided by the Industrial Board. Until such notice of withdrawal becomes effective, any claims arising out of accidental injuries, would be governed by the rules of the common law, except so far as modified by the elective provisions of the Act.[26] If the employer previously rejected the Act, and then withdrew such election, any pending personal injury claims would be triable at common law, with the defenses of fellow servant, assumption of risk and contributory negligence removed. If the employee had previously rejected the Act and withdrew such election, any pending personal injury claims would be triable at common law, with the defenses named available to the employer. In a Louisiana case, the plaintiff contended that the Act did not apply as to her because she had given notice of election not to be bound by it. The law provided that parties to contracts of employment covered by the Act should be presumed to have intended that their contracts should be subject to the Act unless otherwise stipulated or unless notice should be given by either party "not less than thirty days prior to the accident." Plaintiff gave notice after the accident, but within thirty days of the date of her employment. It was contended that she had thirty days within which to give the notice but the court held that the Act explicitly provided the contrary and that by its operation every contract was included unless taken out either by express stipulation in the contract itself or by notice thirty days before the accident, and the fact that the employee had not been in the employment thirty days did not relieve from a strict compliance with the statutory requirements.[27]

It is also held that the election involved in the employee's contract of hiring, whereby he agrees to accept compensation, is binding on his next of kin.[28]

[26] Van Vlissingen v. Lenz, 171 Ill. 162, 7 Ill. Notes, p. 693, § 83.

[27] Boyer v. Crescent Paper Co., 143 La. —, 78 So. 596; 17 N. C. C. A. 473.

[28] Gregutis v. Waclark Wire Wks., 37 N. J. L. J. 181, 11 N. C. C. A. 715.

§ 13. Acceptance or rejection a question of fact. Whether the Act has been accepted or rejected by either employer or employee, where such election is permitted, is a question of fact, to be proved as other questions of fact, by proper evidence.[29] A plaintiff claiming the right to sue at common law may bring his action for damages, and if the defendant then wishes to show that he is subject to the Compensation Act he may do so, and the burden is then upon him to show as a question of fact, that he has complied with the provisions of the law relating to election.[30]

§ 14. Evidence of acceptance or rejection. Proof of acceptance or rejection of the Compensation Act must conform to the requirements of the law with reference to election, either to accept or reject it. The usual rules of evidence apply in the making of such proofs. A copy of the notice of election required to be filed, certified to by the person having charge of the original is admissible as the best evidence.[31] Proof of filing of notice with the Industrial Commission as to election to accept or reject the Act is sufficiently made by proving a copy of the notice filed, certified by the secretary of the Commission and under its seal.[32] Where, after an injury, notices are posted about the employer's place of business to the effect that the employer has accepted the Act, and there is no evidence as to whether notices were posted prior to the accident, evidence as to the posting of notices thereafter is admissible, such evidence being material and pertinent as bearing upon the question as to whether the employer had, with the knowledge of the employees, accepted the Act.[33] Election may also be proved by persons who saw notices posted as required by the statute, and by a copy of the notice, made by one who saw it;[34]

[29] Ellsworth v. Industrial Commission, 290 Ill. 514.

[30] Kampmann v. Cross, 194 S. W. (Tex.) 437, 17 N. C. C. A. 474.

[31] Synkus v. Big Muddy Coal & Iron Co., 190 Ill. App. 602, 17 N. C. C. A. 474.

[32] Kleet v. Southern Illinois Coal & Coke Co., 197 Ill. App. 243, 17 N. C. C. A. 474.

[33] Kampmann v. Cross, 194 S. W. (Tex.) 437, 17 N. C. C. A. 475.

[34] Kleet v. Southern Illinois Coal & Coke Co., 197 Ill. App. 243, 17 N. C. C. A. 475.

and notice may be proved by the testimony of persons who saw it, especially where it has become dimmed or destroyed.[35] In an action by an employee against his employer, a certified copy of a notice, dated after the accident, that the employer elected to come under the Act as of the date of the notice, with a statement that before that time it had not come under the Act, is competent as an admission that the employer was not under the Act at the time the notice was filed.[36] An erroneous recital in a certificate as to the date when the compensation law became effective does not effect its admissibility.[37] And a certificate by a Secretary who is merely described generally as the custodian and keeper of the files, records and documents of the Board, but does not specifically state that he was custodian and keeper thereof, is sufficient and is admissible in evidence.[38]

§ 15. Burden of proof of acceptance or rejection. Where the Act is one which requires the employer to give notice of rejection of the Act, if he does not wish to operate under it, it has been held that in an action by the employee, asserting that the employer has rejected the Act, the burden of proving the allegation is upon the employee.[39] On the other hand, where the employer, who is sued at law, claims the benefits of the provisions of the compensation law, he must plead and prove compliance with the Act.[40] It has been held that in the absence of a plea denying the allegations of the declaration alleging that the employer had elected to reject the provisions of the Act, proof as to the execution, filing and posting of notice respecting such election was waived.[41]

[35] Volin v. St. Louis & O'Fallon Coal Co., 203 Ill. App. 126, 17 N. C. C. A. 475.

[36] Garrett v. Anglo-American Provision Co., 205 Ill. App. 411, 17 N. C. C. A. 475.

[37] Haynes v. Saline County Coal Co., 206 Ill. App. 264, 17 N. C. C. A. 475.

[38] Volin v. St. Louis & O'Fallon Coal Co., 203 Ill. App. 126, 17 N. C. C. A. 475.

[39] Palmieri v. Illinois Third Vein Coal Co., 208 Ill. App. 405, 17 N. C. C. A. 476; Synkus v. Big Muddy Coal & Iron Co., 190 Ill. App. 602, 17 N. C. C. A. 476.

[40] Salvuca v. Ryan & Reilly Co., 129 Md. 235, 17 N. C. C. A. 477; Farmers' Petroleum Co. v. Shelton, 202 S. W. (Tex.) 194, 17 N. C. C. A. 477; Mickel v. Althouse, 176 Pac. (Cal.) 51, 17 N. C. C. A. 478.

[41] Beveridge v. Illinois Fuel Co.,

§ 16. Retroactive effect of election. In Michigan, where it is necessary for the employer to secure the approval of the Industrial Accident Board to his application to accept the Act, it is held that such approval is retroactive to the date of filing by the employer of his notice that he desires to come under the Act, and that in the interim between the date of filing such statement with the Board, and the date of its approval, the employee loses none of his rights.[42]

§ 17. Power of receivers to elect. It is held that receivers, under the general powers conferred upon them, have authority to elect to accept or reject the law, for the company which they represent;[43] and that the receiver of an insolvent corporation should continue, and will be instructed to continue payments of compensation authorized under an award made prior to the receivership.[44]

§ 18. Accident defined. The Illinois Supreme Court has said that the word "accident" is not a technical legal term with a clearly defined meaning, and that no legal definition has ever been given which has been found both exact and comprehensive as applied to all circumstances; and that anything that happens without design is commonly called an accident, and at least in the popular acceptation of the word any event which is unforeseen and not expected by the person to whom it happens is included in the term.[45] The meaning of the word used in workmen's compensation laws is necessarily influenced by the various provisions and purposes of such laws, and cannot be determined, alone, from any dictionary definition. The workmen's compensation law is designed as a substitute for previous rights of action of employees

283 Ill. 173, 17 N. C. C. A. 480; Haynes v. Saline County Coal Co., 206 Ill. App. 264, 17 N. C. C. A. 478. See also: Barnes v. Illinois Fuel Co., 283 Ill. 173, 17 N. C. C. A. 478; Nilsen v. American Bridge Co., 221 N. Y. 12, 17 N. C. C. A. 480.

[42] Bernard v. Michigan United Traction Co., 198 Mich. 497, 17 N. C. C. A. 473; S. C., 188 Mich. 504.

[43] Devine v. Delano, 272 Ill. 166, 17 N. C. C. A. 464.

[44] Wood v. Camden Iron Works, 221 Fed. 110.

[45] Mathiesen & Hegeler Zinc Co. v. Industrial Comm., 284 Ill. 378, 120 N. E. 249, 17 N. C. C. A. 788, note F; Baggot Co. v. Industrial Comm., 290 Ill. 530.

against employers, and to cover the whole ground of the liabilities of the master, and it has been so regarded by all the courts. It has, therefore, been said that the words "accident" and "accidental injury" were meant to include every injury suffered in the course of employment, for which there was an existing right of action at the time the workmen's compensation law was passed, and to extend the liability of the employer to pay compensation for injuries for which he was not previously liable.[46]

The words "accident" and "accidental injury" imply that an injury to be accidental or the result of an accident, must be traceable to a definite time, place and cause, but if there is such a definite time, place and cause and the injury occurs in the course of the employment the injury is accidental within the meaning of the law and the obligation to pay compensation arises. While it is perhaps not possible to give an exact definition of those words, it may be said generally that an injury is accidental within the meaning of the compensation law, when it occurs in the course of the employment unexpectedly, and without the affirmative act or design of the employee.[47] Accidental bodily injury has been defined as a localized abnormal condition of the living body, directly and contemporaneously caused by accident, and an accident as an unlooked for mishap or an untoward event or condition not expected in the course of the employment, and in the absence of statutory provisions enlarging the definition, the concurrence of these two conditions is essential to the right to recover compensation.[48]

The Supreme Court of Michigan has said "that an injury received by a workman while engaged in his usual work, without intervention of something unusual or fortuitous is not an accident."[49] In Indiana it is held that a personal injury, as that term is used in the Workmen's

[46] *Ibid.*

[47] *Ibid;* Baggot v. Industrial Com., 290 Ill. 530, 125 N. E. 254, 18 N. C. C. A.; see also: Robinson v. U. S. Health & Acc. Ins. Co., 192 Ill. App. 475.

[48] Linnane v. Aetna Brewing Co., 99 Atl. (Conn.) 507, 14 N. C. C. A. 428, 15 N. C. C. A. 691.

[49] Guthrie v. Detroit Shipbuilding Co., 200 Mich. 355, 167 N. W. 37, 17 N. C. C. A. 785, 869.

Compensation Act, has reference, not to some break in some part of the body, or some wound thereon, or the like, but rather to the consequence or disability that results therefrom.[50] It is there defined as an "unlooked for mishap or an untoward event, not expected or designed."[51]

A Nebraska court has said that an accident is an event which proceeds from an unknown cause, or is an unusual effect of a known cause, and therefore not expected.[52] The word "accident" as used in compensation acts is not to be given the restricted meaning adopted in the interpretation of accident insurance policies limited to "injuries effected through external, violent and accidental means." The courts uniformly hold that the word is to be given the broader interpretation in harmony with the spirit of liability in which the legislation was conceived so as to make it applicable to injuries to workmen which are unexpected and unintentional, and thus come within the meaning of the term "accident" as it is popularly understood.[53]

A Kentucky court has said that while the word "accident" had been defined in negligence cases as an unexpected event happening without negligence, the word as employed in the compensation law includes any unexpected or unusual event happening with or without negligence.[54]

§ 19. Other definitions. "Accidental injuries" would seem to have substantially the same meaning as the words "personal injury by accident," used in the English Act.[55]

"Accident" has been defined by Lord Macnaghten, as

[50] Indian Creek Coal & Mining Co. v. Calvert, 119 N. E. 519, 17 N. C. C. A. 784, 867.

[51] *Ibid.*

[52] Young v. Western Furniture & Mfg. Co., 164 N. W. 712, 15 N. C. C. A. 678.

[53] Fidelity & Casualty Co. of N. Y. v. Industrial Accident Com., 171 Pac. (Cal.) 429, 17 N. C. C. A. 784; Western Indemnity Co. v. Pillsbury, 170 Cal. 686, 10 N. C. C. A. 1, 151 Pac. 398.

[54] P. Hollenbach Co. v. Hollenbach, 204 S. W. (Ky.) 152, 16 N. C. C. A. 879.

[55] 6 Edw. VII, Chap. 58.

"an unlooked-for mishap, or an untoward event which is not expected or designed.[56]

The German Imperial Insurance Office defines an accident as "a happening, which doing injury to the integrity of the human body, is produced by a single stroke and is clearly marked by a beginning and end." A French publicist defines it as "an injury to the human body due to the sudden and violent action of an exterior cause."[57]

In the English case referred to it was held that the word should be given its popular and ordinary meaning. Applying Lord Macnaghten's definition to the term "accidental injury," however, there would seem to be included all those cases commonly spoken of as accidents and also those in which there are no facts capable of being so described, but in which the results of the occurrence are so unexpected as to be within the definition of an unlooked for or unexpected mishap.

For example, a workman contracted a sudden chill, while working in the water of a mill race, "causing almost immediately severe kidney disease," and death resulted in three days. The finding was that the attack was caused "by sudden impact of the cold water in which he was working." This unusual result was held to be so unexpected and unlooked for as to be properly included within the definition of accident, whereas if a mere ordinary cold or chill had resulted it would not have been properly termed an "accident," because such a result might be reasonably foreseen and anticipated.[58]

Other definitions given by English judges include "any unexpected personal injury resulting to the workman in the course of his employment from any unlooked-for mishap or occurrence;"[59] and "any unintended and unexpected occurrence which produces hurt or loss."[60]

[56] Fenton v. Thorley & Co., (1903), A. C. 443, 448.

[57] Sachet, *Législation sur les Accidents du Travail*, I, 256.

[58] Sheerin v. Clayton & Co., 2 Ir. R. 105, 3 B. W. C. C. 583.

[59] Fenton v. Thorley & Co., (1903), A. C. 443, 451, 5 W. C. C. 1.

[60] *Ibid*, 453.

It was formerly held by the English Court of Appeals that the idea of accident necessarily included something "fortuitous," and that therefore an injury which was caused because of the fact that the work was more arduous than usual could not be included in the term accident. In a later case, however, the court held that the application of the word "fortuituous" was misleading, and not warranted by the statute, or the ordinary meaning of the words "by accident." For example, a workman ruptured himself while trying to turn the wheel of a machine, and the circumstances showed that the injury was the result of an overexertion in the ordinary course of his employment. The House of Lords held that he had suffered an injury "by accident" within the meaning of the statutes.[61] The wide range which has been given to the meaning of the word "accident," under the English Act is illustrated by the following quotation from a Scotch court: "If a workman in the reasonable performance of his duties, sustains a physiological injury as a result of the work he is engaged in, * * * this is 'accidental injury,' in the sense of the statute."[62] This definition, it will be observed, uses the exact language of the Illinois Act—viz., "accidental injury," and holds it to be synonymous with any "physiological injury."

It would seem reasonable, and also sustained by sufficient authority, that the definition of accident, as to whether it is unforeseen and unexpected, should be viewed from the standpoint of the workman. For example, a workman suffered a rupture of the aorta, which was already diseased, and likely to cause his death at any time. The rupture was caused, however, by an ordinary exertion, and it was held that the event was unexpected to the workman, inasmuch as no ordinary man would have anticipated it, from the nature of the work being done; and that it was not proper to inquire whether a physician, with knowledge of the man's condition, would have expected it.[63] In the Court of Appeal in Ire-

[61] *Ibid*, 443.

[62] Stewart v. Wilson, etc., Coal Co., (1902), 5 F. 120, 40 S. L. R. 80.

[63] Clover, Clayton & Co. v. Hughes, (1910), A. C. 242, 79 L. J. (K. B.) 470.

land, it was held that an injury sustained by a gamekeeper, by reason of a personal assault made upon him by poachers, was within the statute.[64] In like manner it was held that the murderous attack of a robber was an event which was neither designed nor expected, so far as the workman was concerned, and was therefore an injury by accident.[65]

§ 20. Proof of accident. The burden of proving accident, where the law provides for compensation for "accidental injury" or "injury by accident" is upon the person claiming such compensation;[66] but it is not necessary that some witness should testify to seeing the accident, "if it is shown in some way that while the employee is at work there has been a recent accident, or some circumstances tending to show the fact."[67] The burden is upon the claimant, however, to establish the happening of the accident, either by direct evidence or evidence from which a legitimate inference reasonably may be drawn.[68]

[64] Anderson v. Balfour, (1910), 2 Ir. R. 497, 3 B. W. C. C. 588.

[65] Nisbet v. Rayne, (1910), 2 K. B. 989, 3 B. W. C. C. 507. See also: Dotzauer v. Strand Palace Hotel, (1910), 3 B. W. C. C. 389; but see *contra* Murray v. Denholm & Co., (1911), 48 S. L. R. 896, S. C., 1087, where the doctrine of the Nisbet and Anderson cases is disapproved by the Court of Session.

[66] Bradley Mfg. Wks. v. Industrial Board, 283 Ill. 468, 17 N. C. C. A. 250; Northern Ill. Light & Traction Co. v. Industrial Board, 279 Ill. 565, 17 N. C. C. A. 251, 15 N. C. C. A. 159n; Savoy Hotel v. Industrial Board, 279 Ill. 329, 17 N. C. C. A. 251; Peterson & Co. v. Industrial Board, 281 Ill. 326, 15 N. C. C. A. 528; Ohio Building Vault Co. v. Industrial Board, 277 Ill. 96, 14 N. C. C. A. 99, 425, 430; Dietzen Company v. Industrial Board, 279 Ill. 11, 15 N. C. C. A. 158; Mechanics Furniture Co. v. Industrial Board, 281 Ill. 530, 15 N C. C. A. 292; Michigan Central Railroad Co. v. Industrial Commission, 290 Ill. 503; Wisconsin Steel Co. v. Industrial Commission, 288 Ill. 206; Edelweiss Gardens v. Industrial Commission, 290 Ill. 459; Milliken's Case, 216 Mass. 293; In re Murphy, 119 N. E. (Mass.) 657, 16 N. C. C. A. 154, 932; Griffith v. Cole Bros., 165 N. W. (Ia.) 577, 16 N. C. C. A. 814.

[67] Peoria Cordage Co. v. Industrial Board, 284 Ill. 90, 17 N. C. C. A. 791, 245.

[68] *Vide* cases, n. 1; Robinson v. State, 104 Atl. (Conn.) 491, 17 N. C. C. A. 251; New Castle Foundry Co. v. Lysher, 120 N. E. (Ind.) 713, 17 N. C. C. A. 251; Inland Steel Co. v. Lambert, 118 N. E. 162 (Ind.), 17 N. C. C. A. 251; Bucyrus Co. v. Townsend, 117 N. E. (Ind.) 656, 17 N. C. C. A. 251; Guthrie v. Detroit Shipbuilding Co., 200 Mich. 355, 17 N. C. C. A. 251, 167 N. W. 13; John A. Roebling's Sons Co. v. Industrial Acc. Com.,

§ 21. Self-inflicted injuries. Suicide and other self-inflicted injuries are clearly not accidental. Where, however, the suicide is superinduced by an injury sustained by accident, it may be included within the term accidental death, unless in the chain of causation, the primary cause is too far removed. Thus, a workman who was already blind in one eye, received an injury to the other eye, which rendered him almost wholly blind, and in consequence of this he suffered a nervous breakdown, as was claimed, and insanity followed, during which he committed suicide. The Court of Session held that under these circumstances the case should not have been dismissed.[69] Where the cause of the accident is uncertain, suicide will not be inferred.[70]

A violent death being shown, the courts will presume that it was an accident rather than suicide;[70a] but this does not mean that it will be further assumed that the accident arose "out of and in the course of the employment." In case of accident, where there are no eye-witnesses, and suicide is the defense, the court will assume that the injury was accidental rather than suicidal, and the burden is upon the defendant to show suicide;[71] but this is as far as the presumption goes, and the claimant must still show some evidence from which a legitimate inference reasonably may be drawn that the accident arose out of and in the course of the employment.[72] Mere contributory negligence is not a bar to compensation.[73]

171 Pac. (Cal.) 987, 17 N. C. C. A. 250.

[69] Malone v. Cayzer, etc., Co., (1908), S. C. 479, 45 S. L. R. 351, 1 B. W. C. C. 27.

[70] Sparks Milling Co. v. Industrial Com., 293 Ill. 350; Furnivall v. Johnston, 5 B. W. C. C. 43; Wishcaless v. Hammond Standish & Co., 201 Mich. 192, 17 N. C. C. A. 793.

[70a] State ex rel. Oliver Min. Co. v. District Court St. Louis Co. (Minn.), 164 N. W. 582, 15 N. C. C. A. 527, 17 N. C. C. A. 248.

[71] Wishcaless v. Hammond Standish & Co., 201 Mich. 192, 17 N. C. C. A. 252.

[72] Rourke v. Holt & Co., (1918), W. C. & Ins. Rep. 7, 17 N. C. C. A. 793; Wishcaless v. Hammond Standish & Co., 201 Mich. 192, 17 N. C. C. A. 792; Bekkedal Lumber Co. v. Industrial Commission, 169 N. W. (Wis.) 561, 17 N. C. C. A. 248; State ex rel. Oliver Min. Co. v. District Court of St. Louis Co. (Minn.), 164 N. W. 582, 15 N. C. C. A. 527.

[73] Gifford v. Patterson, 165 N. Y. Supp. 1043, 15 N. C. C. A. 262;

§ 22. Intoxication. Compensation laws frequently provide that no compensation shall be allowed where the workman is guilty of drunkenness or intentional misconduct. It is uniformly held under such provisions that intoxication is a defense which the employer or insurer must affirmatively allege and prove, and that the claimant need not negative intoxication, where it appears that the accident arose out of and in the course of the employment.[74] Under such a provision of the statute, however, intoxication is a defense which need be proved only with reasonable certainty.[75] Where the statute does not expressly or by necessary implication place the burden upon the defendant to prove intoxication, it is held that if the intoxication takes the man out of his employment, so that it is the intoxication rather than the hazard of his work which causes the injury, he cannot recover for any injury resulting therefrom, even though the defendant makes no affirmative defense of intoxication.[76] Before drunkenness can be a bar to recovery, however, the employee must be so intoxicated that the court may say, as a matter of law, that the injury arose out of his drunken condition and not out of his employment, and intoxication which does not incapacitate the workman from following his occupation will not defeat recovery, although it may be a contributing cause of the injury.[77] And if there is direct evidence that the deceased workman was sober at the time of the accident which caused his death, proof that he was habitually intemperate is incompetent, even though there is also testimony of several witnesses that he was drunk when he entered the building directly before the accident.[78]

Alexander v. Industrial Board, 281 Ill. 207, 15 N. C. C. A. 168; O'Callaghan v. Industrial Com., 290 Ill. 222; Walsh Teaming Co., 290 Ill. 536.

[74] Napoleon v. McCullough, 99 Atl. (N. J.) 385.

[75] Collins v. Cole, 99 Atl. (R. I.) 830.

[76] Pope v. Merritt & Chapman Co., 163 N. Y. Supp. 655.

[77] Hahnemann Hospital v. Industrial Board, 282 Ill. 316.

[78] Lefens v. Industrial Commission, 286 Ill. 32.

§ 23. Illustrations of injuries by accident. Cases under the English Act have held that injuries or death suffered under the following circumstances, are within the definition of accident and should be compensated, viz., by lightning,[79] by sun-stroke,[80] by sun-blindness,[81] by heat prostration from a boiler,[82] by the introduction of foreign substances into the flesh,[83] by an anæsthetic given during a surgical operation,[84] by the careless throwing of stones,[85] by an exertion in the ordinary course of the employment, causing an attack of cerebral hemorrhage,[86] by washing dishes in hot water with caustic soda and soap by a workman with a particularly sensitive skin, which fact was unknown to him,[87] nervous shock, as the result of witnessing an accident to a fellow workman,[88] a fireman working in a stoke-hole, and drinking large quantities of water, causing hemorrhage,[89] by being attacked and bitten by an animal,[90] from infection from a germ or poison getting into the system through a break in the skin,[91] by a fit, causing a workman employed near an open hatchway, to fall through,[92] in which case it was held that while a fit was not an accident, the fact that it took place under such circumstances as to bring to pass unexpected and unforeseen injuries brought it within the language of the statute; rupture

[79] Andrew v. Failsworth Indst. Soc., Ltd., (1904), 2 K. B. 32, 6 W. C. C. 11.

[80] Morgan v. Owners S. S. Zenaida, (1909), 25 T. L. R. 446, 2 B. W. C. C. 19.

[81] Davies v. Gillespie, 5 B. W. C. C. 64.

[82] Ismay, Imrie & Co. v. Williamson, (1908), A. C. 437, 1 B. W. C. C. 232.

[83] Thompson v. Ashington, (1901), 84 L. T. 412, 17 T. L. R. 345, 3 W. C. C. 21.

[84] Shirt v. Calico Ptrs. Assn., (1909), 2 K. B. 51, 2 B. W. C. C. 342.

[85] Challis v. London & S. W. R. R. Co., (1905), 2 K. B. 154, 7 W. C. C. 23.

[86] McInnes v. Dunsmuir, (1908), S. C. 1021, 45 S. L. R. 804, 1 B. W. C. C. 226.

[87] Dotzauer v. Strand Palace Hotel, Ltd., (1910), 3 B. W. C. C. 389.

[88] Yates v. South Kirkby, etc., (1910), 2 K. B. 538, 103 L. T. 170, 3 B. W. C. C. 418.

[89] Johnson v. Owners, S. S. Torrington, (1905), 3 B. W. C. C. 68.

[90] Hapelman v. Poole, (1908), 25 T. L. R. 155, 2 B. W. C. C. 48.

[91] Higgins v. Campbell, (1904), 1 K. B. 32, 6 W. C. C. 1; Turvey v. Brintons, Ltd., (1905), A. C. 230, 7 W. C. C. 1.

[92] Wicks v. Dowell & Co., (1905), 2 K. B. 225, 7 W. C. C. 14.

of cartilage of the knee which had been injured three years before, causing incapacity for a time, caused by rising from his knee, in which position the man had been working;[93] death from tetanus twelve days after a fall of coal upon workman's foot.[94]

Among "accidents" held to be embraced in the French law are an injury from falling in a fit from the horse-play of a comrade, unless the victim began it;[95] and from voluntarily taking a risk in the line of humanity or duty.[96]

§ 24. American cases. In the following American cases, the injury was held to be accidental; where an employee lifting a heavy weight suffered a strain which caused dilatation of the heart, resulting in acute cardiac dilatation;[97] fumes and gases, causing death from arsenical poisoning;[98] assault by an intoxicated fellow workman;[99] lead poisoning,[100] glanders,[1] and optic neuritis,[2] under the Massachusetts law, which covers "personal injuries;"[3] infection from a cut on the hand of an undertaker's assistant, made while embalming a body inoculated with the germ which caused the infection;[4] actinomycosis, an infection of the nose and mouth in one grinding and sacking wheat and barley;[5] infection of an old injury;[6] infection getting into the body through the respiratory organs;[7] exertion

[93] Borland v. Watson, (1912), S. C. 150, 5 B. W. C. C. 514.

[94] Stapleton v. Dinnington Main Coal Co., 5 B. W. C. C. 602.

[95] I Sachet, *Legislation*, etc., 416, 421, 422.

[96] Walton's Workmen's Comp. Law Quebec, 90.

[97] In re Gibbons, 186 N. Y. Supp. 412, 17 N. C. C. A. 80, 89.

[98] Matthiessen & Hegeler Zinc Co. v. Industrial Board, 284 Ill. 378, 17 N. C. C. A. 342, 788.

[99] In re Employers' Lia. Assur. Corp., 102 N. E. (Mass.) 697.

[100] Johnson v. London G. & A. Co., 104 N. E. (Mass.) 735, 4 N. C. C. A. 843.

[1] Hood & Sons v. Maryland Casualty Co., 206 Mass. 223.

[2] In re Hurle, 217 Mass. 223, 4 N. C. C. A. 527.

[3] In re London G. & A. Co., 104 N. E. (Mass.) 735.

[4] Blaess v. Dolph, 161 N. W. (Mich.) 885, 15 N. C. C. A. 587.

[5] Hartford Acc. & Ind. Co. v. Industrial Acc. Com., 163 Pac. (Cal.) 225, 14 N. C. C. A. 131, 849.

[6] Morrison v. Battelle, 170 Pac. (Kan.) 662.

[7] Dove v. Alpena Hide & Leather Co., 164 N. W. (Mich.) 253, 15 N. C. C. A. 586.

during the course of the employment, causing cerebral hemorrhage;[8] strain, causing aneurism;[9] rupture from sudden strain;[10] sun-stroke;[11] janitor freezing toe while shoveling snow from walk adjacent to place of employment;[12] heat prostration from boiler;[13] freezing fingers and toes while delivering coal;[14] and freezing while working in railroad construction camp;[15] swamper freezing thumb;[16] acute nephritis, caused by standing in hot pulp;[17] hemorrhage from nose, while at work, following long illness from typhoid fever;[18] pulmonary tuberculosis, following jump into river to avoid injury;[19] blood poisoning, due to a scratch received while at work;[20] hernia caused by a strain;[21] venereal infection, caused by removing a piece of foreign matter from the eye, or washing the eye after its removal;[22] dropping to sleep while on duty, and falling out of window;[23] felon, which develops from a bruised hand;[24] pneumonia, following injury;[25] death from fire, caused by matches carried in

[8] State ex rel. Simmers v. District Court, 163 N. W. (Minn.) 667, 15 N. C. C. A. 523; Southwestern Surety Co. v. Owens, 198 S. W. (Tex.) 662; Fowler v. Risedorph Bottling Co., 175 App. Div. (N. Y.) 224, 14 N. C. C. A. 141, 533.

[9] Haskill & Barker Car Co. v. Brown, 117 N. E. (Ind.) 555, 15 N. C. C. A. 640.

[10] Shanning v. Standard Castings Co., 169 N. W. (Mich.) 879.

[11] State ex rel. Rau v. District Court, 164 N. W. (Minn.) 916, 15 N. C. C. A. 679; Young v. Western Furniture Mfg. Co., 164 N. W. (Neb.) 712, 15 N. C. C. A. 676.

[12] State ex rel. Nelson v. District Court, 164 N. W. (Minn.) 917, 15 N. C. C. A. 681.

[13] Kanscheit v. Garrett Laundry Co., 164 N. W. (Neb.) 708, 15 N. C. C. A. 675; City of Joliet v. Industrial Com., 291 Ill. 555.

[14] Days v. Trimmer & Sons, 176 N. Y. App. Div. 124, 162 N. Y. Supp. 603, 15 N. C. C. A. 681.

[15] Nikkiczuk v. McArthur, 9 Atla. 503, 28 Dom. L. Rep. 279, 15 N. C. C. A. 683.

[16] State ex rel. Virginia & Rainy Lake Co. v. District Court, 164 N. W. (Minn.) 585, 15 N. C. C. A. 685.

[17] United Paperboard Co. v. Lewis, 117 N. E. (Ind.) 276, 15 N. C. C. A. 688.

[18] Gilliland v. Ash Grove Lumber & Portland Cement Co., 180 Pac. (Kan.) 793.

[19] Rist v. Larkin & Sangster, 171 N. Y. Supp. Div. 71, 15 N. C. C. A. 690.

[20] In re Bean, 116 N. E. (Mass.) 826, 14 N. C. C. A. 950.

[21] In re Brown, 116 N. E. (Mass.) 897.

[22] State ex rel. Adriatic Min. Co. v. District Court, 163 N. W. (Minn.) 755, 15 N. C. C. A. 588.

[23] Gifford v. Patterson, 165 N. Y. Supp. 1043, 15 N. C. C. A. 262.

[24] Woodruff v. R. H. Howes Constr. Co., 178 N. Y. Supp. 418.

[25] Murdock v. N. Y. News Bureau, 106 Atl. (Pa.) 788.

employee's pocket being ignited by bumping against a locker while on the way to the toilet.[26]

§ 25. Illustrations of injuries held not to be accidental. In the following cases, the injury was held not to be "by accident," viz., eczema caused by dipping rings into a basin of carbon bisulphide;[27] heart disease claimed to be caused by a strain in turning a heavy valve;[28] assault on a workman who was a strike breaker;[29] strain from lifting a heavy hutch by a workman with advanced heart disease;[30] lifting the heavy cover of a gear box, which was a part of the regular duties of the employee and which caused no unusual exertion;[31] attack upon an errand boy with a hatchet by the employer who was subject to fits of melancholy;[32] sun-stroke suffered by a plumber of impaired vitality while laying pipes in a road in excessive summer heat;[33] sun-stroke of a driver of a brewery wagon;[34] heat stroke where the workman was merely exposed to the usual working temperature to which he was accustomed in his daily work;[35] workman struck by lightning at night while lodging in employer's boarding tent;[36] workman struck by lightning while working on a road;[37] a fall resulting from a fit;[38] injury resulting from hysteria;[39] a drunken man falling over-

[26] Steels Sales Corp. v. Industrial Com., 293 Ill. 435.

[27] Evans v. Dodd, 5 B. W. C. C. 305.

[28] Beaumont v. Underground Electric Railway Co., Ltd., 5 B. W. C. C. 247; Stombaugh v. Peerless Wire Fence Co., 164 N. W. (Mich.) 537; Schroetke v. Jackson Church Company, 160 N. W. (Mich.) 383.

[29] Murray v. Denholm & Co., (1911), S. C. 1087, 5 B. W. C. C. 496.

[30] Spence v. W. Baird & Co., Ltd., (1912), S. C. 343, 5 B. W. C. C. 542.

[31] Guthrie v. Detroit Ship Building Co., 167 N. W. (Mich.) 37.

[32] Blake v. Head, 28 T. L. R. 321, 5 B. W. C. C. 303.

[33] Robeson, Eckford & Co. v. Blakey, (1912), S. C. 334, 5 B. W. C. C. 536.

[34] Campbell v. Clausen-Flanagan Brewery, 171 N. Y. Supp. 522.

[35] Roach v. Kelsey Wheel Co., 167 N. W. (Mich.) 33.

[36] Griffith v. Cole Bros. 165 N. W. (Ia.) 577.

[37] Wiggins v. Industrial Accident Board, 170 Pac. (Mont.) 9.

[38] Van Gorder v. Packard Motor Car Co., 162 N. W. (Mich.) 107; *note:* in Peterson v. Industrial Board, 281 Ill. 326, the court said, "A fall resulting from a dazed mental condition arises out of the condition and not out of the employment"; see also Milliken v. Towle, 216 Mass. 293.

[39] Saenger v. Locke, 116 N. E. (N. Y.) 367.

board and drowning;[40] a miner contracting blood poisoning due to an abscess on his knee;[41] injury to hand and blood poisoning which it was claimed caused development of cancer two years later;[42] rupture of the aorta where physicians testified it was impossible to tell what caused the rupture;[43] hernia alleged to be caused by heavy lifting, to which however the employee was accustomed, the strain being caused by his usual and customary work;[44] strangulation of an existing hernia;[45] workman in charge of a threshing machine stung by a wasp;[46] frost bite on hand of a baker whose duties it was *inter alia* to drive wagon and deliver bread for his employer;[47] injury caused by wearing hard and tight boots;[48] injury sustained by a workman in the ordinary course of his employment by red lead coming in contact with a blistered finger.[49]

§ 26. Is disease an accidental injury? The third schedule of the English Act of 1906 expressly includes certain occupational or industrial diseases, viz., anthrax, lead, mercury, phosphorus and arsenic poisoning and ankylostomiasis, and to this list the Secretary of State, by authority given him in the statute, has added a large number of other diseases. Under the original Act, no such provision as to occupational or industrial diseases was made, and it was therefore held that such diseases were not covered by the Act, viz., lead poisoning, beat hand and beat knee.[50]

[40] Frith v. S. S. Louisianian, (1912), 2 K. B. 155, 5 B. W. C. C. 410; Meyer v. Butterbrodt, 146 Ill. 131.

[41] Howe v. Fernhill Collieries, Ltd., 5 B. W. C. C. 629.

[42] Ortner v. Zenith Carburetor Co., 175 N. W. (Mich.) 122.

[43] Knight's case, 120 N. E. (Mass.) 395.

[44] Tackles v. Bryant & Detwiller, 167 N. W. (Mich.) 36; Kutschmar v. Briggs Mfg. Co., 163 N. W. (Mich.) 933.

[45] Perry v. Ocean Coal Co., Ltd., 106 L. T. 713, 5 B. W. C. C. 421; Dodge v. Barstow Stove Co., 100 Atl. (R. I.) 245; Fleming v. Robt. Gair Co., 162 N. Y. Supp. 298.

[46] Amys v. Barton, (1912), 1 K. B. 40, 5 B. W. C. C. 117.

[47] Warner v. Couchman, 5 B. W. C. C. 177, (1911), 1 K. B. 351; *contra:* Days v. S. Trimmer & Sons, 162 N. Y. Supp. 603, holding that a coal teamster may recover for ulcerated fingers due to frost bite.

[48] White v. Sheepwash, (1910), 3 B. W. C. C. 384.

[49] Walker v. Lilleshall Coal Co., (1900), 1 Q. B. 488, 2 W. C. C. 7; *overruled* (?) in Turvey v. Brinton, (1905), A. C. 230, 7 W. C. C. 1.

[50] Steel v. Cammell, Laird & Co.,

It would seem that by no process of reasoning could an ordinary disease be considered "unexpected," or an "unlooked-for mishap" as those terms are used in the definition of an accident. Furthermore, the Illinois Act requires notice of the accident to be given the employer,[51] and by the employer to the Industrial Board,[52] and these provisions would clearly indicate that there was contemplated some definite event, the date of which could be fixed with certainty, and this could not, of course, be done, with respect to industrial or occupational diseases.[53]

Furthermore, in some jurisdictions it has been held that an accident must be accompanied by violence which at the time produces injury to the physical structure of the body.[54]

When occupational diseases are covered by the Act and claim is made for compensation for the occupational disease, it must appear that the disease is occupational and not such a disease as any one may be subject to, regardless of the employment.[55]

§ 27. Diseases held to be accidental injuries. Certain diseases are well recognized as being definitely attributable to accident, as for example, those caused by the accidental injection of a disease germ, and under such circumstances, the disease is properly described as an accidental injury. As falling within this class, anthrax has been held to be an accidental injury.[56]

In a leading English case, the Earl of Halsbury, L. C., said, "It does not appear to me that by calling the con-

Ltd., (1905), 2 K. B. 232, 7 W. C. C. 9; Marshall v. East Holywell Coal Co., (1905), 93 L. T. 360, 7 W. C. C. 19; Gorley v. Owners of Backworth Collieries, (1905), 93 L. T. 360, 7 W. C. C. 19; see also La Fleur v. Wood, 164 N. Y. Supp. 910.

[51] § 24 of the Act.

[52] § 30 of the Act.

[53] City of Joliet v. Industrial Com., 291 Ill. 555; Matthiessen & Hegeler Zinc Co. v. Industrial Com., 284 Ill. 378, 17 N. C. A. A. 342, 788.

[54] State ex rel. Faribault v. District Ct., 164 N. W. (Minn.) 810.

[55] Industrial Com. v. Roth, 120 N. E. (O.) 172. See also 15 N. C. C. A. 687 n.

[56] Chicago Rawhide Co. v. Industrial Com., 291 Ill. 616; Hiers v. Jno. A. Hull Co., 164 N. Y. Supp. 767; Eldridge v. Endicott Johnson & Co., 177 N. Y. Supp. 863; Dove v. Alpena Hide & Leather Co., 164 N. W. (Mich.) 253.

sequence of an accidental injury a disease, alters the nature or the consequential results of the injury that has been inflicted.''[57]

While anthrax is a disease, it is caused by a virulent germ which is frequently found in wool and hides, and workmen employed in handling these materials frequently become infected with the germ through sores or abrasions on the skin, and in such cases the courts generally hold that the infection is within the definition of accident as used in workmen's compensation acts. This has generally been the holding of the courts in other cases of infection from specific germs under similar circumstances.[58] Actinomycosis caused by handling wheat and barley has been held to be an accidental injury in accordance with the same principle;[59] also tetanus suffered by a gardener working with a wound in his foot caused by a nail;[60] also blood poisoning following a wound on the hand suffered in the course of the employment;[61] and an injury to the eyes from the use of extraordinary quantities of wood alcohol;[62] venereal infection following injury to the eye of a miner caused by particle of iron ore;[63] and disability caused from inhaling poisonous fumes in attempting to put out a fire.[64]

The following cases of disease have been held to be due to accident, viz., paralysis caused by exertion of a traveling salesman in running to catch a train while carrying heavy hand baggage used by him in his work;[65] nephritis caused by exposure of a workman going to his

[57] Brinton's, Ltd., v. Turvey, (1905), A. C. 230, 233, 234, 7 W. C. C. 1.

[58] Higgins v. Campbell & Harrison, Ltd., (1904), 1 K. B. 32, 6 W. C. C. 1.

[59] Hartford Acc. & Ind. Co. v. Industrial Acc. Comm., 163 Pac. (Cal.) 225.

[60] Walker & Mullins, (1908), 42 Ir. L. T. 168, 1 B. W. C. C. 211.

[61] Dobish v. Cudahy Packing Co., 171 Pac. (Kansas) 915; Coastwise Ship Building Co. v. Tolson, 103 Atl. (Md.) 478.

[62] Fidelity & Casualty Co. v. Industrial Acc. Comm., 171 Pac. (Cal.) 429.

[63] State ex rel. Adriatic Mining Co. v. District Ct., 163 N. W. (Minn.) 755.

[64] Munn v. Industrial Board, 274 Ill. 70.

[65] Crosby v. Thorp-Hawley Co., 172 N. W. (Mich.) 535.

home after working in heat and steam;[66] acute pericarditis following injury to side;[67] acute peritonitis following injury;[68] strangulation of an existing hernia;[69] diabetes from shock to a workman previously in good health;[70] tuberculosis following accidental fracture of ribs;[71] bronchitis attributable to debilitated state to which workman had been reduced by broken leg and crushed back;[72] eczema caused by exposure to fumes and splashes of carbon bi-sulphide;[73] rheumatism and gangrene subsequent to injury caused by dropping heavy weight on foot;[74] serious nervous disease following shock from fire which burned part of shop;[75] death caused by inhaling poisonous fumes generated by firing a shot in a mine.[76]

Where an employee receives an injury to his foot and while convalescing takes a ride in an automobile and contracts pneumonia, and the testimony is conflicting as to any connection between the accident and the pneumonia, it was held the award would not be disturbed.[77] Where a fireman of a zinc smelting plant, whose duties were to draw the scum from the molten zinc which contained arsenic and gave off fumes or gases, becomes sick and dies after a few days' illness with symptoms of arsenical poisoning, the administrator may recover as for an accidental injury, where it is shown that during fifty years of operation of the plant, no case of lead or arsenical poisoning had ever been known.[78] Where an employee was injured by a barrel falling on his leg and the injury

[66] United Paperboard Co. v. Lewis, 171 N. W. (Ind. App.) 276.

[67] La Fleur v. Wood, 164 N. Y. Supp. 910; Bucyrus Co. v. Townsend, 117 N. E. (Ind. App.) 656.

[68] Lindquest v. Holler, 164 N. Y. Supp. 906.

[69] Vonnegut Hdwe. Co. v. Rose, 120 N. E. (Ind. App.) 608; Puritan Bed Spring Co. v. Wolfe, 120 N. E. (Ind. App.) 417.

[70] Balzer v. Saginaw Beef Co., 165 N. W. (Mich.) 785.

[71] Lundy v. Geo. Brown & Co., 105 Atl. (N. J.) 362.

[72] Thoburn v. Bedlington Coal Co., Ltd., 5 B. W. C. C. 128.

[73] Evans v. Dodd, 5 B. W. C. C. 305.

[74] Stinton v. Brandon Gas Co., 5 B. W. C. C. 426.

[75] Hoare v. Arding & Hobbs, 5 B. W. C. C. 36.

[76] Kelly v. Auchenlea Coal Co., (1911), S. C. 864, 48 S. L. R. 768, 4 B. W. C. C. 417.

[77] Bergstrom v. Industrial Com., 286 Ill. 19.

[78] Matthiessen & Hegeler Zinc Co. v. Industrial Comm., 284 Ill. 378.

subsequently developed an abscess, necessitating treatment in a hospital, where he suffered further injury from a fall while getting out of bed, breaking his leg at a point where the abscess had attacked the bone, his death from shock when operated on six days later was held properly attributable to the original injury.[79]

Also under the Massachusetts Compensation Act providing for compensation in all cases of "personal injury," lead poisoning and glanders have been held compensable injuries.[80] The application of this provision of the Massachusetts Act has been limited, however, by the holding that a disease claimed to be covered by the Act must be such as may rightly be described as a personal injury, and that the gradual breaking down or destruction of tissues caused by long and laborious work is not the result of a personal injury.[81]

§ 27a. Diseases aggravated by accident. Workmen are often found to be afflicted with disease at the time of the happening of the accident, which disease renders them more susceptible to injury, and the question arises whether the resulting incapacity is due to accident, within the terms of the law, or whether the continuing and gradually increasing diseased condition is the cause of the incapacity. The rule of the English courts, as stated by Lord Loreburn, and which has been largely followed in this country, is that the workman is entitled to compensation "if it appears that the employment is one of the contributing causes, without which the accident which actually happened would not have happened, and if the accident is one of the contributing causes, without which the injury which actually followed would not have followed."[82] In the case referred to, a workman suffering from aneurism was ruptured while tightening a nut, and it was held that death was caused by a strain arising out

[79] Hammond Co. v. Industrial Comm., 288 Ill. 262.

[80] Johnson v. London Guar. & Acc. Co., 104 N. E. (Mass.) 735; Hood & Sons v. Maryland Casualty Co., 206 Mass. 223.

[81] In re Magglet, 116 N. E. (Mass.) 972.

[82] Clover, etc., v. Hughes, (1910), A. C. 242, 245, 3 B. W. C. C. 275.

of his ordinary work, but operating upon such a condition of the body as rendered the exertion fatal.[83]

Mere predisposition to disease does not make the injury any the less accidental, if the disease is actually brought on by the injury.[84] For example, a fireman fell from an engine cab, and died without regaining consciousness, and although the autopsy showed pre-existing disease which predisposed him to hemorrhage of the brain, which caused his death, it was held that the accident was a contributing cause, and an award for compensation was sustained.[85] Again, it has been said that the mere fact that the employee's condition renders him more susceptible to the particular injury which he sustains, offers no ground for holding that the disease or condition, rather than the accident, was the proximate cause of the injury.[86] The fact that a person is already afflicted with a dormant disease that might some day produce physical disability, is no reason why he should not be allowed compensation for a personal injury which causes the disease to become active or virulent, and superinduces physical disability.[87] Or if the accident arouses latent germs of a disease to which the workman is predisposed, materially accelerating the disease causing death, it is held an accident within the law.[88] Furthermore, the presence of a disease which in itself partially disables the workman, will not operate to deprive him of compensation where it is shown that the accident in fact increased the

[83] *Ibid*,—See, however, Taylor v. Bolckow, etc., 5 B. W. C. C. 130. See also, as bearing upon the subject of aggravation of disease by accident, the following cases: Golder v. Caledonian R. Co., (1902), 40 S. L. R. 89; Connell v. Barr, (1903), 116 L. T. Newsp. 127; Warnock v. Glasgow Iron & Steel Co., (1904), 6 F. 474; Rayman v. Fields, (No. 2, 1910), 102 L. T. 154, 3 B. W. C. C. 123; Dean v. London N. W. R. Co., (1910), 3 B. W. C. C. 353; M'Innes v. Dunsmuir & Jackson, Ltd., (1908), S. C. 1021, 1 B. W. C. C. 226; Ismay, Imrie & Co. v. Williamson, (1908), A. C. 437, 1 B. W. C. C. 232; Lloyd v. Sugg, (1900), 1 Q. B. 486; Coe v. Fife Coal Co., (1909), S. C. 393.

[84] Wabash Railway Co. v. Industrial Commission, 286 Ill. 194.

[85] Peoria Railway Ter. Co. v. Industrial Board, 279 Ill. 352.

[86] Puritan Bed Spring Co. v. Wolfe, 120 N. E. (Ind. App.) 417.

[87] Behan v. John B. Honor Co., 78 So. (La.) 589; Hanson v. Dickinson, 176 N. W. (Ia.) 823.

[88] Retmier v. Cruse, 119 N. E. (Ind. App.) 32.

disability.[89] It has been held, however, that a slight acceleration or aggravation of an existing, progressive disease, is not sufficient to bring the case within the spirit or the letter of the compensation law.[90] In a Michigan case, an aged workman, suffering from an advanced stage of arterio-sclerosis, fell causing an injury to his hip, which set up a train of physical disturbances, which ultimately caused his death, and the injury was held to be accidental within the meaning of the law.[91]

In a Massachusetts case, a workman was crushing stone with a 16-lb. sledge hammer. While in the act of striking a blow with the hammer he collapsed and fell to the ground and died without regaining consciousness. It was held that where the evidence was conflicting as to whether the accident was caused by the exertion upon a weakened heart, or was due wholly to disease, an award for compensation would not be disturbed.[92] In a Minnesota case it was held that long-standing pulmonary tuberculosis lighted up by an injury to the chest resulting in broken ribs, was an accidental injury within the terms of the law.[93]

§ 28. Diseases held not to be accidental. While the mere calling of an accidental injury a disease, will not make it so,[94] on the other hand a disease which is naturally produced as the result of being engaged in a particular employment is not within the law. The element of accident, as defined by the cases must exist. For example, sciatic rheumatism, brought on by exposure to cold and damp conditions which are usual to the employment is not an accident;[95] nor paralysis due to the strain of the employee's ordinary work;[96] nor Hodgkin's Dis-

[89] Slinger v. Muskegon Motor Specialties Co., 167 N. W. (Mich.) 949.

[90] Borgsted v. Shultz Bread Co., 167 N. Y. Supp. 647.

[91] Gaffney v. Goodwillie Bros., 169 N. W. (Mich.) 849.

[92] Weatherbee's Case, 120 N. E. (Mass.) 845.

[93] State ex rel. Jefferson v. District Court of Ramsey County, 164 N. W. (Minn.) 1012. See also Van Kuren v. Dwight Devine & Co., 165 N. Y. Supp. 1049; Santa v. Industrial Accident Commission, 175 Cal. 235, 17 N. C. C. A. 260.

[94] Brintons v. Turvey, (1905), A. C. 230.

[95] Blair v. Omaha Ice & Storage Co., 165 N. W. (Neb.) 893.

[96] Manning v. Pomerene, 162 N. W. (Neb.) 492.

ease, claimed to have been caused by inhaling fumes of hydrochloric acid;[97] nor paralysis of the leg, due to long and continuous exertion in riding a tricycle;[98] nor cardiac breakdown brought on by continuous and excessive exertion;[99] nor sudden heart failure, in one who had progressive heart disease;[100] nor blood clot on the brain;[1] nor rupture of the aorta;[2] nor tuberculosis following abrasions to the leg and foot, where the evidence as to the effect of the abrasions was conflicting;[3] nor dermatitis, caused by washing inkstands, without proper gloves, in a solution of caustic soda;[4] nor sore hands, caused by handling mahogany stain in a furniture factory;[5] nor enteritis, caused by inhaling sewer gas;[6] nor abscess on the knee of a coal miner required to work on knees;[7] nor blood poisoning on the finger of a railroad fireman, growing out of a cut received at his home;[8] pneumonia, in a fireman, caused by a wetting in putting out a fire;[9] scarlet fever, in a porter in a fever hospital;[10] alleged strained back, in a miner who died from Bright's disease;[11] pneumonia following accident to arm;[12] strangulation of an existing hernia.[13] Where a workman sustained a fall, which was not sufficient to have

[97] State ex rel. Johnson Hdw. Co. v. Dist. Court, 177 N. W. (Minn.) 644.

[98] Walker v. Hockney Bros., (1909), 2 B. W. C. C. 20.

[99] Coe v. Fife Coal Co., Ltd., (1909), S. C. 393, 46 S. L. R. 325, 2 B. W. C. C. 8.

[100] Ohara v. Hayes, (1910), 44 Ir. L. T. 71, 3 B. W. C. C. 586; Beaumont v. Under. Ry. Co., 5 B. W. C. C. 247.

[1] Hansen v. Turner Construction Co., 120 N. E. (N. Y.) 693.

[2] Indian Creek Coal Co. v. Calvert, 119 N. E. (Ind. App.) 519.

[3] McCarthy's Case, 120 N. E. (Mass.) 852.

[4] Cheek v. Harmsworth Bros., (1901), 4 W. C. C. 3,—but see the later case of Dotzauer v. Strand Palace Hotel, Ltd., (1910), 3 B. W. C. C. 389.

[5] Jerner v. Imperial Furniture Co., 166 N. W. (Mich.) 943.

[6] Broderick v. London County Council, (1908), 2 K. B. 807, 1 B. W. C. C. 219; and Eke v. Hart-Dyke, (1910), 2 K. B. 677, 3 B. W. C. C. 482.

[7] Howe v. Fernhill Collieries, 5 B. W. C. C. 629.

[8] Chandler v. Great Western Ry. Co., 106 L. T. 479, 5 B. W. C. C. 254.

[9] Landers v. City of Muskegon, 163 N. W. (Mich.) 43.

[10] Martin v. Manchester Corp., 106 L. T. 741, 5 B. W. C. C. 259.

[11] Ashley v. Lisselhall Co., Ltd., 5 B. W. C. C. 85.

[12] Cameron v. Port of London Authority, 5 B. W. C. C. 416.

[13] Perry v. Ocean Coal Co., Ltd., 106 L. T. 713, 5 B. W. C. C. 85.

caused his death under ordinary circumstances, he was denied compensation where there was evidence that during the previous summer he was confined to his bed with heart disease.[14] It has been held that the court will take judicial notice of the fact that hernia is a disease arising from natural causes, as well as from accident, and that therefore it must appear that the hernia was accidental.[15] And inasmuch as hernia results from natural causes as well as from accident, it is incumbent upon the workman who claims disability resulting from hernia to offer some evidence that the hernia was caused by accident.[16] But whether the hernia is caused by accident or not is, in a disputed case, a question of fact.[17] A number of the statutes provide that the workman, in order to be entitled to compensation for hernia must prove that it is of recent origin, that its appearance was accompanied by pain, that it was immediately preceded by some accidental strain in the course of the employment, and that it did not exist prior to the alleged injury. Because of the danger, in this class of cases, of simulation and malingering, due to the fact that hernia due to natural causes or constitutional weakness is common, the legislature has seen fit in these states to impose upon the claimant the burden of proving these essentials of accidental hernia, and where such proof is required, these necessary facts must first be established by the evidence before compensation will be awarded.[18]

§ 29. Accident insurance cases—accident-disease. The courts have frequently been called upon to consider the relation of disease to accident, under accident insurance contracts, and the effect of pre-existing or concurrent disease upon the liability under such contracts has become fairly well defined. For example, where the ques-

14 Johnson v. Mary Charlotte Min. Co., 165 N. W. (Mich.) 650.

15 Cavalier v. Chevrolet Motor Car Co., 178 N. Y. Supp. 489.

16 Alpert v. J. C. & W. E. Powers, 119 N. E. (N. Y.) 229; Meade v. Wisconsin Motor Mfg. Co., 169 N. W. (Wis.) 619.

17 Nagy v. Solvay Process Co., 166 N. W. (Mich.) 1033.

18 McPhee & McGinnity v. Industrial Commission, 185 Pac. (Col.) 268.

tion involved was whether blood poisoning, resulting from a cut on the hand, which became infected, was accidental, the Supreme Court of Illinois said: "If the death was caused by a disease which was not the result of any bodily infirmity or disease in existence at the time of the accident * * * the association was equally liable to pay the indemnity. In such a case the disease is an effect of the accident; the incidental means produced and used by the original moving cause to bring about its fatal effect; a mere link in the chain of causation between the accident and the death."[19] And again: "The simple question is whether the death * * * resulted through natural causes, without the interposition of a new and independent cause from the cut on his finger. Disease brought about as the result of a wound, even though not the necessary or probable result, yet if it is the natural result of the wound, and not of an independent cause, is properly attributed to the wound, and death resulting from the disease is a death resulting from the wound, even though the wound was not in its nature, mortal or even dangerous."[20]

It has generally been held under accident insurance policies that if the death is caused by a previous diseased condition of the body, without which the death would not not have followed the accident, it is not an accidental death.[21] But the rule has not been so closely drawn in workmen's compensation cases. It has generally been held that the meaning of accident under workmen's com-

[19] Central Accident Ins. Co. v. Rembe, 220 Ill. 151, 158-9, 8 Ill. Notes, 734, Sec. 82; Western Commercial Travelers v. Smith, 56 U. S. App. 393.

[20] Cent. Acc. Ins. Co. v. Rembe, 220 Ill. 151, 159; Omberg v. United States Mut. Acc. Assn., 101 Ky. 303; Freeman v. Mercantile Mut. Acc. Assn., 156 Mass. 351; Travelers Ins. Co. v. Murray, 16 Col. 296; Young v. Accident Ins. Co., 6 Id. 1; United States Health & Accident Co. v. Harvey, 129 Ill. App. 104; 10 Ill. Notes, p. 977, § 71; Fidelity & Casualty Co. v. Morrison, 129 Ill. App. 360; 10 Ill. Notes, p. 981, § 201.

[21] Central Accident Ins. Co. v. Rembe, 220 Ill. 151; Hubbard v. Mutual Accident Assn., 98 Fed. 930; Commercial Travelers Mut. Accident Assn. v. Fulton, 79 Fed. 423; National Masonic Accident Assn. v. Shryock, 73 Fed. 774; Aetna Life Ins. Co. v. Dorney, 67 N. E. (O.) 254; 1 Cyc. 262, note 64.

pensation acts must be distinguished from the meaning of the word in accident insurance policies, and that under such laws personal injury by accident has reference, not to some definite wound or break in some part of the body, but rather to the consequences or disability that results therefrom. Incapacity affecting earning ability is the concern of the legislature in enacting a workmen's compensation law, and if therefore the accident, directly or indirectly causes or substantially contributes to the disability of a workman who prior to the accident has been able to do his work, it is an accident within the meaning of the compensation law, as distinguished from disease.[22] Disease or death subsequent to an injury, however, must be shown to have some connection with the accident which it is claimed caused the disease or death.[23] For example, where an employee suffered an accident in 1915, and in 1918 became incapacitated by reason of a cancer, and there was no evidence that the infecting germ found lodgement by reason of the accident, or that the irritation was attributable to the injury, it was held that the incapacity resulted from disease and not from accident.[24]

§ 30. "Arising out of and in the course of the employment." This language is identical with the language of the English Act and has been adopted in most of the American compensation laws. It will be observed that the accident must be one that arises both out of and in the course of the employment. It seems that the "or" in the French Act gives a somewhat wider range than the "and" in the English Act.[24a] Under the English Act, and those American laws which have adopted the English provision, an accident arising out of the employment, but not within the course of it would not be cov-

[22] Indian Creek Coal Mining Co. v. Calvert, 119 N. E. (Ind. App.) 519; Van Kuren v. Dwight, Devine & Sons, 165 N. Y. Supp. 1049.

[23] Albaugh Dover Co. v. Industrial Board, 278 Ill. 179, 14 N. C. C. A. 130, 427, 545.

[24] Ortner v. Zenith Carburetor Co., 175 N. W. (Mich.) 122; see also McRae v. Morgan & Wright, 171 N. W. (Mich.) 394.

[24a] Walton, Work. Comp. Law, Quebec, p. 83.

ered, nor would an accident arising within the course of the employment, but not arising out of it.[25]

Whether or not an accident falls within these terms, is a question of fact;[26] and when there is evidence which takes the matter out of the realm of speculation, an award will not be disturbed.[27]

The words "arising out of" have reference to the cause or origin of the accident, and seem to indicate that the accident must happen out of the transaction of the business in which the workman is engaged.[28] They would include accidents which result from acts of omission or commission of fellow workmen, or of the workman himself, if performed within the course of the employment, and they would also include any accident which might naturally result from the manner in which the business is carried on, and which would be considered incidental to the employment itself.

The words "in the course of" mean during the employment, and have reference, particularly, to the time, place and circumstances under which the accident occurs.[29] It has been said that an accident happens to a workman "in the course of his employment" if it happens while he is doing what a man so employed may reasonably do within a time during which he is employed, and at a place where he may reasonably be during that time.[30] An injury may be said to "arise out of the employment" when

[25] Mueller Construction Co. v. Industrial Board, 283 Ill. 148, 16 N. C. C. A. 902; Dietzen v. Industrial Board, 279 Ill. 11, 15 N. C. C. A. 158; Hills v. Blair, 148 N. W. (Mich.) 243, 7 N. C. C. A. 409; Lobuzek v. American Car & Foundry Co., 162 N. W. (Mich.) 107, 16 N. C. C. A. 221; Bevard v. Skidmore-Patterson Coal Co., 165 Pac. (Kan.) 139, 16 N. C. C. A. 692.

[26] Mechanics Furniture Co. v. Industrial Board, 281 Ill. 530, 16 N. C. C. A. 142; Bryant v. Fissell, 86 Atl. (N. J.) 458, 3 N. C. C. A. 585; Smith v. Lancashire, etc., R. Co., (1889), 1 Q. B. 141, 1 W. C. C. 1; Langley v. Reeve, (1910), 3 B. W. C. C. 175; Henderson v. Glasgow Corp., (1900), 2 F. 1127; Johnson v. Owners S. S. Torrington, (1905), 3 B. W. C. C. 68.

[27] Sparks Milling Co. v. Industrial Com., 293 Ill. 350; Weatherbee's case, 120 N. E. (Mass.) 845.

[28] Van Gorder v. Packard Motor Car Co., 162 N. W. (Mich.) 107; Fitzgerald v. Clarke, (1908), 2 K. B. 796, 799, 1 B. W. C. C. 197.

[29] Fitzgerald v. Clarke, (1908), 2 K. B. 796, 1 B. W. C. C. 197.

[30] Moore v. Manchester Liners, Ltd., (1910), A. C. 498, 3 B. W. C. C. 527; Dietzen Co. v. Industrial Board, 279 Ill. 11, 15 N. C. C. A. 158.

there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Under this test, if the injury can be seen to have followed as a natural incident of the work and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises out of the employment; but it excludes an injury which cannot fairly be traced to the employment as a contributing proximate cause and which comes from a hazard to which the workman would have been equally exposed apart from the employment. The causative danger must be peculiar to the work and not common to the neighborhood. It must be incidental to the character of the business and not independent of the relation of master and servant. It need not have been foreseen or expected, but after the event it must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a rational consequence.[31] But the accident must have had its origin in some risk of the employment, and if the proof is as consistent with the theory that it had no such origin or connection, but resulted from other causes, there can be no recovery. Liability cannot rest upon imagination, speculation or conjecture,—upon a choice between two views equally compatible with the evidence, —but must be based upon facts established by evidence fairly tending to prove them.[32] The burden is upon the claimant to prove that the accident arose out of the employment by direct and positive evidence or by evidence from which such inference may fairly and reasonably be drawn.[33] While this essential fact may be proved by cir-

[31] McNichol's Case, 215 Mass. 497, 4 N. C. C. A. 522; Mueller Construction Co. v. Industrial Board, 283 Ill. 148, 16 N. C. C. A. 902.

[32] Edelweiss Gardens v. Industrial Commission, 290 Ill. 459; Peterson & Co. v. Industrial Board, 281 Ill. 326, 15 N. C. C. A. 528.

[33] Ohio Building Vault Co. v. Industrial Board, 277 Ill. 96, 14 N. C. C. A. 99, 425, 430; Wisconsin Steel Co. v. Industrial Commission, 288 Ill. 206.

cumstantial evidence, it must be of such certain and definite character as to justify the inference that the accident arose out of the employment.[34] And while it is generally held that whether the accident arose out of and in the course of the employment is a question of fact, or a mixed question of law and fact,[35] at the same time legal conclusions of the officer or board given exclusive jurisdiction over questions of fact, which are not based on any evidence, are not binding on the courts and will not be sustained.[36] And neither the triers of the facts nor the courts of appeal are authorized to bring within the scope of the Act cases which are not included in its terms.[37] The words "arising out of and in the course of the employment" are definite words of limitation, and the Compensation Act was not intended to provide compensation for all accidental injuries to employees.[38] The law was not intended to make the employer an insurer of the safety of his employees at all times during the period of the employment.[39] It has been said that if the act of the workman which resulted in the accident is one which the employee would not be expected to undertake, or one which the employer would not reasonably command or expect the employee to do, the accident does not arise out of the employment.[40]

[34] Mayeur v. J. R. Crowe Coal & Min. Co., 186 Pac. (Kan.) 1035; Dragovitch v. Iroquois Iron Co., 269 Ill. 478, 484-5, 14 N. C. C. A. 427; Buhse v. W. & K. Iron Wks., 160 N. E. (Mich.) 557, 16 N. C. C. A. 188; New Castle Foundry Co. v. Lysher, 120 N. E. (Ind. App.) 713, 17 N. C. C. A. 251, 791; United States v. Ross, 92 U. S. 281; Compton v. Industrial Commission, 288 Ill. 41; Mattoon Clear Water Co. v. Industrial Commission, 291 Ill. 487; State ex rel. Johnson Hdw. Co. v. District Court, 177 N. W. (Minn.) 644.

[35] Foley v. Home Rubber Co., 99 Atl. (N. J.) 624, 16 N. C. C. A. 886.

[36] Dietzen Co. v. Industrial Board, 279 Ill. 11, 15 N. C. C. A. 158; Bradley Mfg. Works v. Industrial Board, 283 Ill. 468, 17 N. C. C. A. 250; Paul v. Industrial Commission, 288 Ill. 532.

[37] City of Chicago v. Industrial Commission, 291 Ill. 23; Van Gorder v. Packard Motor Car Co., 162 N. W. (Mich.) 107, 110.

[38] Pekin Cooperage Co. v. Industrial Commission, 285 Ill. 31, 17 N. C. C. A. 962.

[39] Fairbanks Co. v. Industrial Commission, 285 Ill. 11, 17 N. C. C. A. 948.

[40] Williamson v. Industrial Accident Commission, 171 Pac. (Cal.) 797, 16 N. C. C. A. 884.

§ 31. Illustrative cases. Whether the accident arises out of and in the course of the employment is usually a question which must be decided upon the particular facts of each case.[41] Many of the American courts have given to the words "arising out of and in the course of the employment" a much more liberal construction than have the English courts. The English judges have consistently held that the words "arising out of" have reference to the cause or origin of the accident, and mean that the accident must happen out of the transaction of the business in which the workman is engaged;[42] and that the words "in the course of" have reference particularly to the time, place and circumstances under which the accident occurs. This construction of the words merely gives effect to their ordinary meaning, and to the legislative intention of excluding injuries which do not affirmatively appear to be connected in some way with the employment and incidental to it and happening during the course thereof. The construction adopted by some American courts on the other hand destroys, for all practical purposes, the meaning of these words. For example, a night watchman was killed by an unknown person who had gone into the plant where he was working and taken his revolver from a cupboard in the engine room where it was kept, some distance from where the homicide was committed. The body was found at the door of the engine room, and the person who fired the shot was apparently not near him. There was no evidence, either direct or circumstantial, tending to prove that the watchman was or had been forcibly ejecting any person from the plant or removing any one therefrom. In sustaining an award, the court said "there is nothing from which any reasonable inference could be drawn that the killing was done for revenge by some one who had a grudge against him," whereas the claimant should be held to show facts or circumstances from which an inference of liability may be drawn.[43] Where a work-

41 Myers v. Louisiana Ry. Co., 74 So. (La.) 256, 15 N. C. C. A. 227.

42 Fitzgerald v. Clarke, (1908), 2 K. B. 796, 799, 1 B. W. C. C. 197.

43 Mechanics Furniture Co. v. Industrial Board, 281 Ill. 530, 16 N.

man was killed by a brick thrown by a fellow employee for the purpose of waking up the workman, so that he might be ready to go to work on a night shift, an award for compensation was sustained.[44] An accident which happened while a workman was going to answer a telephone, where it did not appear whether it was a personal call or one relating to the business in which he was engaged, was held to "arise out of" the employment.[45] Freezing of the toe of a janitor while shoveling snow from the sidewalk adjacent to the building of which he was janitor, was held to be an accident arising out of and in the course of the employment, although it appeared that the janitor had a right to go into the building at any time and warm himself and that his exposure to the cold was common to the neighborhood.[46] In another case decided by the same court an award for death from lightning was sustained, the court saying that if the accident was "natural" to the employment, it need not "in general be one peculiar to the particular employment."[47] Where an employee was burned by setting fire to a bandage saturated with turpentine on his wounded hand, by lighting a cigarette, the court held that the burning was incidental to the employment.[48] Where a workman who sat down before a fire, and fell asleep, and a greasy apron which he wore caught fire and before he could wake up and protect himself he was seriously injured, it was held he was entitled to compensation.[49] It is difficult to see how any of these cases show any reasonable connection between the injury and the risks peculiar to the employment.

Where the hazard results from a dangerous custom or use of the premises known to the employer, an accident

C. C. A. 142; see also Sparks Milling Co. v. Industrial Com., 293 Ill. 350.

[44] Colucci v. Edison Portland Cement Co., 108 Atl. (N. J.) 313.

[45] Holland-St. Louis Sugar Co. v. Shraluka, 116 N. E. (Ind.) 330, 15 N. C. C. A. 271.

[46] State ex rel. Nelson v. District Court of Ramsey County, 164 N. W. (Minn.) 917, 15 N. C. C. A. 681.

[47] Peoples Coal & Ice Co. v. District Court of Ramsey County, 153 N. W. (Minn.) 119.

[48] Duorte v. Whiting-Medd Chemical Co., 173 Pac. (Cal.) 1105.

[49] Richards v. Indianapolis Abattoir Co., 102 Atl. (Conn.) 604, 15 N. C. C. A. 269.

caused thereby is held to be within the law. For example, an injury to an employee caused by a fall from a fire escape which he attempted to descend for the purpose of calling on the timekeeper, at the close of the day's work, was held to arise out of and in the course of the employment where it was customary for the workmen to use the fire escape as a means of descent, which custom was known to the employer.[50] An employee injured while trespassing upon a railroad track, in violation of an ordinance, was held entitled to compensation where it appeared that he was going after tools used by himself and fellow workmen on the previous day, and which were needed by the men in carrying on their work. It was held that the violation of the ordinance was merely *prima facie* evidence of negligence, and that contributory negligence was no defense to the claim.[51] Injuries due primarily to a cyclone, but aggravated by escaping steam and ammonia fumes from pipes and ammonia coils in the building where the workman was employed, were held compensable.[52] A carpenter foreman who was struck and injured by an automobile while crossing a street for the purpose of using a telephone to order materials necessary for his work, it appearing that there was no telephone in the building where he was working, was held to be within the protection of the law;[53] and a workman going to answer a call of nature, on the premises of his employer.[54]

A boy fifteen years old was playing with a revolver, when it was accidentally discharged, killing a watchman. It appeared that the revolver was kept in the office of the plant, which fact was known to the employer, and that it was necessary for use by the watchman. It was held that the accident arose out of and in the course of the employment.[55]

[50] Stephens Engineering Co. v. Industrial Commission, 290 Ill. 88.

[51] Alexander v. Industrial Board, 281 Ill. 201, 15 N. C. C. A. 167.

[52] Central Illinois Public Service Co. v. Industrial Commission, 291 Ill. 256.

[53] Mueller v. Industrial Board, 283 Ill. 148, 16 N. C. C. A. 902.

[54] Welden v. Skinner & Eddy Corporation, 174 Pac. (Utah) 452, 17 N. C. C. A. 691, 959.

[55] Marchiatelle v. Lynch Realty Co., 108 Atl. (Conn.) 799.

In death cases, where the cause of the accident is more or less obscure or uncertain, definite proof by eye-witnesses as to just how the workman came to his death is not essential, if there are sufficient facts from which a legitimate inference may be drawn that the accident arose out of and in the course of the employment.[56] But the mere finding of the employee dead, upon the employer's premises, is not sufficient to prove that the accident arose out of and in the course of employment.[57] There must at least be circumstances from which a legitimate inference may be drawn that the accident arose out of and in the course of the employment.[58]

§ 32. Falls. Falls, like other accidents to workmen, are compensable if they have their origin in some risk of the employment and are incident to it. The question in such cases is whether the circumstances of the employment require the workman to incur some special risk of falling and, if so, it is held that no matter how slight this risk may be it cannot be said no greater danger was imposed upon the workman than upon other persons.[59]

For example, in the following cases, the fall has been held incident to the employment: where an employee fell down stairs in the building where he was employed and during the time he was about his work;[60] where an insurance agent traveling about in the course of his work

[56] Sparks Milling Co. v. Industrial Com., 293 Ill. 350; Walsh Teaming Co. v. Industrial Commission, 290 Ill. 536; Leary v. McIlvane, 106 Atl. (Pa.) 785; Meyers v. Michigan Central R. Co., 165 N. W. (Mich.) 703, 17 N. C. C. A. 256; Holnagle v. Lansing Fuel & Gas Co., 116 N. W. (Mich.) 843, 17 N. C. C. A. 787; Wishcaless v. Hammond Standish & Co., 166 N. W. (Mich.) 993, 17 N. C. C. A. 247, 252, 792; Mechanics Furniture Co. v. Industrial Board, 281 Ill. 530, 16 N. C. C. A. 142; In re Casualty Company of America, 111 N. E. (Mass.) 696, 12 N. C. C. A. 551; Ohio Building Vault Co. v. Industrial Board, 277 Ill. 96, 14 N. C. C. A. 99, 425, 430; Wisconsin Steel Co. v. Industrial Board, 288 Ill. 206; Smith-Lohr Coal Mining Co. v. Industrial Board, 286 Ill. 34.

[57] Moyer v. Packard Motor Car Company, 171 N. W. (Mich.) 403; Proctor v. Serbino, (1915), 3 K. B. 344.

[58] Ohio Building Vault Co. v. Industrial Board, 277 Ill. 96, 14 N. C. C. A. 99, 425, 430. See also 15 N. C. C. A. 674, note, and 10 N. C. C. A. 618.

[59] Mueller v. Industrial Board, 283 Ill. 148, 16 N. C. C. A. 902.

[60] In re O'Brien, 117 N. E. (Mass.) 619, 15 N. C. C. A. 236.

slipped on the ice;[61] where a sailor fell while crossing gang plank in going from his ship to another in the course of his duties;[62] where a sailor fell while climbing a ladder leading from a quay to his ship;[63] and where the sailor had safely crossed the gang plank and fell while astride the ship's rail;[64] where a sailor fell climbing a ladder while returning to a trawler from the quay where it was moored.[65]

On the other hand, it has been held that an employee who, in passing along the street, while engaged in his master's business, slips on an orange peel, is not within the Act, as anyone passing along such street would be subject to the same risk.[66]

These cases are frequently complicated by other circumstances which have sometimes influenced the courts to arrive at conclusions at variance with the general principle referred to. For example, evidence is sometimes offered to the effect that the fall was due to a fit or to dizziness or to the altitude at which the workman was employed at the time of the accident. If the initiating, proximate cause is a fit or other illness unconnected with the nature of the employment, the fall arises out of the fit or other illness and not out of the employment and, accordingly, is not incidental to it and not covered by the law.

As has been stated by the Supreme Court of Illinois, "a fall resulting from a dazed mental condition arises out of the condition and not out of the employment."[67]

It has been held, however, that if the fit and the employment are each contributing causes of the fall, an award for compensation will not be disturbed by the courts.[68] It was held in one of the earlier English cases

[61] In re Harraden, 118 N. E. (Ind. App.) 142, 15 N. C. C. A. 230.

[62] Leach v. Oakley Street & Co., 4 B. W. C. C. 91.

[63] Moore v. Manchester Liners, 3 B. W. C. C. 527.

[64] Canavan v. Owners S. S. Universal, 3 B. W. C. C. 357.

[65] Jackson v. General Steam Fishing Co., 2 B. W. C. C. 56.

[66] Chapman v. Pearn, 9 B. W. C. C. 224.

[67] Peterson v. Industrial Board, 281 Ill. 326, 15 N. C. C. A. 528.

[68] Brooker v. Industrial Accident Commission, 168 Pac. (Cal.) 126, 15 N. C. C. A. 215.

that, where a workman afflicted with epilepsy fell into the hold of a ship while working near an open hatchway, because of the "necessary proximity to the precipice," to-wit, the open hatchway, the hazard of the employment was at least one of the contributing causes and that the workman was entitled to compensation; whereas, if he had merely fallen in an epileptic fit upon the deck of the ship, the accident would arise out of the fit and not out of the employment.[69] The force of this English case, however, has been materially minimized by two later holdings of the same court, in one of which the deceased fell in a fit of coughing which produced giddiness;[70] and in the other, the deceased fell while his mental faculties were dulled by intoxication;[71] and in each case the court held that there could be no recovery.

With reference to the altitude or elevation at which the employee may be working at the time of the accident, it is held that if, as a matter of fact, the initiating, proximate cause of the fall was unconnected with the employment, it is wholly unimportant and immaterial, so far as the law is concerned, how far the employee may fall. In other words, if the fall has its inception in some risk peculiar to the employment, then it matters not whether the employee merely falls to the floor or the ground on which he may be standing or from an elevation, but the essential fact to be shown before liability is established is that the fall was started or caused by some hazard peculiar to the employment. For example, in a Michigan case, it appeared that the initiating, proximate cause of the accident to the employee was an epileptic fit; and in discussing the relation to the question of liability of the altitude or elevation at which the workman was engaged at the time of the accident, the Supreme Court of Michigan said:

"The height from which he fell—here, only a short distance—could not change the liability for the injury.

[69] Wicks v. Dowell Co., 7 W. C. C. 14.

[70] Butler v. Burton-On-Trent Union, 5 B. W. C. C. 355.

[71] Nash v. The Rangatira, (1914), 3 K. B. 978.

The most that can be said is that the height from which he fell may have aggravated the extent of the injury. A person falling a greater distance may be more seriously injured than one falling a lesser distance; but it does not change the question of responsibility or liability." [72]

In a similar case in California, it is said:

"The injury was doubtless the greater by reason of the distance from the scaffold to the ground, but this distance was not due to the nature of the work itself. The question whether or not such an injury arises 'out of' the employment cannot, and does not, depend on the height from which the employee fell." [73]

But where it has been shown that the elevation at which the employee was required to work was in itself sufficient to, and that it apparently did, bring on an attack of vertigo, or some similar disorder which caused the workman to fall to the ground with dizziness, and the resulting fall grew directly out of the employment, the risk was, therefore, incidental to the employment.[74]

§ 33. Period of employment. The law is clear that the accident must happen during the *period* of the employment. It therefore becomes important to determine when the employment begins and ends, within the meaning of the law, and this may have no reference to the actual time when the workman actually begins or quits work.[75]

To be "employed" in anything, means not only the act of doing it, but also to be engaged to do it.[76]

The exact time when the employee's wages begin or end is not conclusive on the question of whether the accident happens within the period of the employment.[77]

[72] Van Gorder v. Packard Motor Car Co., 162 N. W. (Mich.) 107.

[73] Brooker v. Industrial Accident Commission, 168 Pac. (Cal.) 126, 15 N. C. C. A. 215.

[74] Santa Croce v. Sag Harbor Brick Works, 169 N. Y. Supp. 695, 17 N. C. C. A. 787. See also Milliken v. Towle, 216 Mass. 293, 4 N. C. C. A. 512; and Gifford v. Patterson, 165 N. Y. Supp. 1043, 15 N. C. C. A. 262; Sparks Milling Co. v. Industrial Com., 293 Ill. 350.

[75] Sharp v. Johnson, (1905), 2 K. B. 139, 7 W. C. C. 28; Holmes v. Great Northern Ry. Co., (1900), 2 Q. B. 409, 2 W. C. C. 19.

[76] Ritchie v. People, 155 Ill. 98, 103; 7 Ill. Notes, p. 172, § 52; United States v. Morris, 14 Peters 464.

[77] Mueller v. Industrial Board, 283 Ill. 148, 16 N. C. C. A. 902.

The cases, both in England and America, seem to establish the general rule that a workman's employment does not begin until he has reached the place where he works, or until he has reached the scene of his duty, and the period of going to and returning from work is usually excluded.[78]

§ 34. Going to and from work. In accordance with the general rule that the time of going to and returning from work is usually excluded from the period of the employment, accidents in the following cases were held not to arise out of and in the course of the employment: A workman injured by the accidental discharge of a shot gun while on the way to work, the gun being taken along by a fellow workman for the purpose of hunting "after we quit work;"[79] a workman injured while riding home on his employer's truck, for his own convenience;[80] where the workmen were driven to work in the employer's truck, but over an unauthorized route, more convenient to their homes, instead of over the route designated by the employer;[81] an extra switchman, employed irregularly, from day to day, as needed, reported for work, and after being told there was no employment, climbed on a moving freight train for his own convenience in going home, and was struck by a viaduct, under which the train passed;[82] where an employee is injured return-

[78] Walters v. Staveley Coal Co., (1910), 105 L. T. 119, 4 B. W. C. C. 303; Benson v. Lancashire, etc., R. Co., (1904), 1 K. B. 242, 6 W. C. C. 20; Gilmour v. Dorman, Long & Co., (1911), 105 L. T. 54, 4 B. W. C. C. 279; Low v. Gen. Steam. Fishing Co., Ltd., (1909), A. C. 523, 531, 533, 2 B. W. C. C. 56; Greene v. Shaw, 5 B. W. C. C. 573, 46 Ir. L. T. 18; Biggart, v. S. S. Minnesota, 5 B. W. C. C. 68; Barnes v. Nunnery Colliery Co., (1912), A. C. 44, 5 B. W. C. C. 195; Pace v. Appanoose Co., 168 N. W. (Ia.) 916, 17 N. C. C. A. 682, 942; Balk v. Queen City Dairy Co., 172 N. Y. Supp. 471; Industrial Commission of Colorado v. Anderson, 169 Pac. (Col.) 135, 15 N. C. C. A. 249; Indiana Steel Co. v. Lambert, 118 N. E. (Ind. App.) 162; Friebel v. Chicago City Ry. Co., 280 Ill. 76, 16 N. C. C. A. 390, 688; Fairbank Co. v. Industrial Commission, 285 Ill. 11, 17 N. C. C. A. 948.

[79] Ward v. Industrial Accident Commission, 164 Pac. (Cal.) 1123, 15 N. C. C. A. 223.

[80] Eriskson v. St. Paul City Ry. Co., 169 N. W. (Minn.) 532, 17 N. C. C. A. 950.

[81] United Disposal Co. v. Industrial Commission, 285 Ill. 11.

[82] Michigan Central R. Co. v. Industrial Commission, 290 Ill. 503.

ing to a mine, riding on a truck for his own convenience;[83] a railroad employee going to a bunk car, on the employer's track, when he might have gone on a parallel highway near at hand;[84] where the employee goes to work over a route, over which the employer has no control, when furnished another safe means of access;[85] an employee during the lunch hour was sitting in the packing room in which he was employed, and when the starting whistle blew at one o'clock started to get up from the chair in which he was sitting, and took hold of a machine near by to help himself up, and the machine started and injured him;[86] a garage employee, after taking a passenger by automobile to the destination directed by the employer, suggests to the passenger that they continue their drive while waiting for the train, and after riding some distance further the employee is killed by the passenger who had suddenly become insane;[87] a workman hired to begin work the following day, even though he has received partial compensation in the nature of transportation to the place of work;[88] employee working on catch basins, two miles from home, riding in employer's wagon, with other employees, according to custom;[89] an employee who was catching a ride on cars being switched in and out of the yard, which was not the usual and customary manner of leaving the premises;[90] a workman injured by a train striking the automobile in which he was riding upon his return to the city where the headquarters of his employer were located;[91] a workman, injured while doing the work of a fellow-employee, as an accommodation, by private arrangement

[83] Boggess v. Industrial Accident Commission, 169 Pac. (Cal.) 75, 15 N. C. C. A. 268.

[84] Guastelo v. Michigan Cent. R. Co., 160 N. E. (Mich.) 484, 15 N. C. C. A. 241.

[85] Wilkin v. H. Koppers Co., 100 S. E. (W. Va.) 300.

[86] Rochford's Case, 124 N. E. (Mass.) 891.

[87] Central Garage v. Industrial Commission, 286 Ill. 291.

[88] B. D. & C. R. R. Co. v. Industrial Board, 276 Ill. 239, 16 N. C. C. A. 811, 813.

[89] In re Donivan, 104 N. E. (Mass.) 431, 4 N. C. C. A. 549.

[90] Foster-Latimer Lumber Co. v. Industrial Commission, 167 N. W. (Wis.) 453, 16 N. C. C. A. 753, 927.

[91] International Harvester Co. v. Industrial Board, 282 Ill. 489, 16 N. C. C. A. 911.

between themselves;[92] an engineer in a railroad yard, turned in his engine, having completed his work, and instead of leaving the yard by numerous available streets, walked along the tracks and across another street and up onto a track elevation, and was there fatally injured, although it appeared that he was intending to catch a freight train to ride to a point where he could get his pay;[93] where an employee drove employer's automobile to reach a place where a check was to be countersigned, with instructions to return the check the following morning, it was held that his duty as employee terminated when the check was countersigned, so that the employer was not responsible for the negligent operation of the machine during the remainder of the day, although such negligence occurred while he was returning for his overcoat, which he had forgotten;[94] an employee going to supper in an automobile, after the close of his regular hours of service, and before the beginning of his extra hours, who was struck by a street car.[95] Employee was a car inspector in the railroad company's yards. He was accustomed to go for dinner on Sunday, and walked on the railroad right of way in order to avoid exposing himself in his working clothes to the view of the people on the highway; he fell from a trestle within the limits of the railroad yards, in which yard he performed certain of his duties.[96] A miner proceeding to his work in a tub, contrary to the rules;[97] a seaman went ashore for his own purposes, and was injured by a train near the docks;[98] injury to a stockherd, going on his bicycle to farm where he was employed, caused by his dog running into him, held not to have arisen out of the employment;[99] a shepherd riding in conveyance provided by

[92] Sherer v. Industrial Accident Commission, 166 Pac. (Cal.) 318.

[93] Ames v. New York Cent. R. R. Co., 165 N. Y. Supp. 84, 15 N. C. C. A. 279.

[94] Brimberry v. Dudfield Lumber Co., 186 Pac. (Cal.) 205.

[95] Otto v. Duluth Street Ry. Co., 164 N. W. (Minn.) 1020.

[96] McInerney v. Buffalo & S. R. Corp., 121 N. E. (N. Y.) 806.

[97] Barnes v. Nunnery Col. Co., (1912), A. C. 44, 5 B. W. C. C. 195.

[98] Biggart v. S. S. Minnesota, 5 B. W. C. C. 68.

[99] Greene v. Shaw, 46 Ir. L. T. 18, 5 B. W. C. C. 573.

employer, to his home, according to custom and terms of employment;[100] a man engaged to load a van was promised the job of unloading it at the place of destination, and on the way met with an accident;[1] an engineer on the way to work, left the usual path to speak to a fellow workman, within the line of his duty;[2] a workman in taking a short cut, per custom, across a vacant lot, owned by the employer, but separated by railroad tracks, was injured;[3] a workman was injured while climbing a wall, adjoining his place of employment;[4] a workman was injured on the way to work, three-quarters of a mile from the place of work;[5] a messenger was injured by slipping on a banana skin, while on an errand.[6]

The question of whether an injury to an employee on the way to or from his work arises out of the employment depends upon the circumstances of each case. The custom of employees in choosing certain routes in going to and returning from work is often a material fact which should be considered.[7]

§ 35. Exceptions to the rule, excluding accidents which happen while going to and from work. While the general rule is, as stated, that accidents which occur while the workman is going to and from his work are not considered as arising out of and in the course of the employment, the cases recognize certain more or less well defined exceptions, which arise either

1. By reason of the terms of the contract of employment.
2. By reason of circumstances attending the actual entering and leaving of the employer's premises.
3. By circumstances requiring overtime work.
4. Interruptions in the employment.

[100] Whitbread v. Arnold, (1908), 99 L. T. 103, 1 B. W. C. C. 317.

[1] Perry v. Anglo-American Dec. Co., (1910), 3 B. W. C. C. 312.

[2] Benson v. Lancashire, etc., R. Co., (1904), 1 K. B. 242, 6 W. C. C. 20.

[3] Gilmour v. Dorman, etc., Co., (1911), 105 L. T. 54, 4 B. W. C. C. 279.

[4] Gibson v. Wilson, (1901), 3 F. 661.

[5] Walters v. Staveley Coal Co., (1910), 105 L. T. 119, 4 B. W. C. C. 303.

[6] Smith v. Morrison, 5 B. W. C. C. 161.

[7] Schweiss v. Industrial Commission, 292 Ill. 90.

§ 36. Going to and from work. (1.) *Exceptions arising by reason of the terms of the contract of employment.* Traveling salesmen, whose duties require them to travel to and from the employer's place of business, fall within this exception by reason of the terms of their contract of employment. For example, a city salesman who was crossing a street, presumably to call upon a customer on his way home from work, and is struck by an automobile is within the protection of the law.[8] Accidents which happen to such employees are covered, during all the time while they are engaged in the employer's business, and including the necessary time involved in returning to their homes.[9] An insurance agent, employed to collect premiums from door to door, who was injured while on his rounds, by slipping on a stairway, was held to be injured in the course of his employment;[10] also an insurance solicitor injured while running to catch a street car.[11] Where a traveling salesman selling church goods, was injured by a fall on the ice, while walking from the house of a clergyman whom he had visited in connection with his business, it was held the accident did not arise out of the employment, as there was no causal connection between the conditions under which his work was performed and the resulting injury in that the risk of slipping on the ice was common to all.[12] But it was held in New York that where an employee crossed a street between two buildings operated by his employer, and slipped on the ice and was injured, the street being little used by the public, the accident should be held to arise out of the employment as certainly as though the workman had reached a point within the factory of the employer, and there slipped and was injured.[13] A salesman

[8] Bachman v. Waterman, 121 N. E. (Ind. App.) 8, 17 N. C. C. A. 956.

[9] Dickinson v. Barmark, Ltd., (1908), 124 L. T. Newsp. 403; State ex rel. McCarthy Bros. v. District Court of Hennepin Co., 169 N. W. (Minn.) 274, 17 N. C. C. A. 959.

[10] Réfuge Assur. Assn., Ltd. v. Millar, (1911), 49 Sc. L. R. 67, 5 B. W. C. C. 522.

[11] Moran's Case, 125 N. E. (Mass.) 501.

[12] Donahue v. Maryland Casualty Co., 116 N. E. (Mass.) 226.

[13] Redner v. H. C. Faber & Son, 167 N. Y. Supp. 242, 16 N. C. C. A. 903.

who was engaged in taking orders for his employer, and went about the country on a motorcycle, is entitled to compensation for an injury sustained by being struck by a railroad train.[14] Also, where an insurance agent went to a town in Michigan from his home in Indiana upon instructions from his company, and after getting off the train, slipped on the ice and fell, it was held that but for his employment he would not have been in that locality, and his employment was therefore a contributing cause of his injury, and the work he was employed to do requiring travel made him particularly subject to such hazards, to a greater extent than the general public.[15]

Where it is stipulated in the contract of hiring that the employee should be given free transportation to his place of work an accident sustained while being so transported arises out of the employment;[16] and the rule is also extended to cover the necessary time of waiting on the platform for the purpose of boarding or alighting from the train or other vehicle.[17] For example, where an employee on a boat reported for duty at 5 o'clock, in accordance with instructions, and was told the boat would sail at 11 o'clock, and he went ashore, leaving his baggage on the boat, and while returning about 10 o'clock was injured by a fall on the employer's premises.[18] Mere custom among the workmen of using the train, is not sufficient to extend the period of employment to include the getting on and off trains, however; there must be an express or implied obligation, on the part of the employer, as part of the contract of employment, to furnish transportation, although no obligation on the part of the workman to use the train would seem to be necessary.[19] But it has been held in Michigan that

[14] Mulford v. A. S. Pettit & Sons, Inc., 116 N. E. (N. Y.) 344.

[15] In re Harraden, 118 N. E. (Ind. App.) 142.

[16] Klinck v. Chicago City Ry. Co., 262 Ill. 280, and cases cited; Swanson v. Latham & Crane, 101 Atl. (Conn.) 492, 15 N. C. C. A. 245; Osterhout v. Latham & Crane, 101 Atl. (Conn.) 494, 15 N. C. C. A. 247; Scalia v. American Sumatra Tobacco Co., 105 Atl. (Conn.) 346; Holmes v. G. N. Ry. Co., (1900), 2 Q. B. 409, 2 W. C. C. 19.

[17] Cremins v. Guest, etc., (1908), 1 K. B. 469, 1 B. W. C. C. 160; Carter v. Rowe, et al., 101 Atl. (Conn.) 491.

[18] *Ibid.*

[19] Parker v. Pont, 105 L. T. 493;

where it was the custom to take workmen to and from work by train, as a part of the employment arrangement, and the employee expresses a preference for walking, and he does walk over the usual route, his pay commencing from the time he leaves for work, he is entitled to compensation for injuries sustained while on his way to work.[20] A mere gratuitous concession, however, on the part of the employer, with reference to transportation, is not sufficient.[21] Time necessarily consumed in reporting at a certain office before leaving work, or in going to a certain station to collect wages due, is considered within the employment.[22] This rule was held not to apply, however, to a laborer who, after his day's work, was going two miles to his employer's farm to receive his wages, and finding a fellow workman going the same way with a cart rode with him and was thrown out and injured.[23] In another case it was held that a miner travelling to work on his employer's train, furnished for the purpose, and who stepped out onto the foot board when the train was slowing up, contrary to orders, was injured in the course of his employment.[24] An employee returning with an empty gasoline wagon after making a delivery, who falls from his seat while attempting to raise the canopy top of the wagon and is killed, is within the terms of the law.[25] An incidental agreement to afford protection going to and from work, will not extend the Act, however, but will give an injured man his remedy at common law on the contract.[26]

§ 37. Going to and from work. (2.) *Exceptions by reason of circumstances attending the actual entering and leaving the employer's premises.* It is held that a

Davies v. Rhymney I. Co., Ltd., (1900), 16 T. L. R. 329, 2 W. C. C. 22.

[20] Porritt v. Detroit United Railway, 165 N. W. (Mich.) 674, 15 N. C. C. A. 241.

[21] Nolan v. Porter & Sons, (1909), 2 B. W. C. C. 106.

[22] Nelson v. Belfast Corp., 42 Ir. L. T. 223, 1 B. W. C. C. 158; Todd v. Caledonian R. Co., (1899), 1 F. 1047, 36 S. L. R. 784.

[23] Parker v. Pont, 105 L. T. 493, 5 B. W. C. C. 45.

[24] Watkins v. Guest, etc., 106 L. T. 818, 5 B. W. C. C. 306.

[25] Gibson v. Industrial Board, 276 Ill. 73, 16 N. C. C. A. 636.

[26] Poulton v. Kelsall, 5 B. W. C. C. 318, (1912), 2 K. B. 131.

workman must be given a reasonable time within which to enter or leave his place of employment, during which he will be entitled to the protection of the Act, and entitled to compensation as for accidents arising out of and in the course of the employment, although he may not at the time be actually engaged in his work. If the workman is lawfully on the premises, the employment is held to continue. For example, if the workman is injured on the first floor of his employer's premises, while going to his work on an upper floor, he is covered by the terms of the Act.[27] The rule has been stated as follows: "While the workman is physically engaged in making his exit from the place where he is employed, I think the employment would still continue for the purposes of the Act, and the workman would still be entitled to the protection thereby given, * * * but there must be time * * * when he can no longer be said to be engaged in the employment. * * * It appears to me to be a question of fact, where the line is to be drawn."[28] An accident caused by slipping on the stair, while the employee is leaving the employer's premises is covered by the law.[29] Where an employee going to work was injured while crossing a railroad track within the employer's enclosure where the employee worked, it was held the injury arose out of and in the course of the employment.[30] Where a machinist employed by a railroad company in repairing engines, after finishing work started to walk down a switch track according to custom, and was struck by an engine.[30a] Where an employee fell because of striking her toe against the outer edge of the top step of the stairs, as she was about to pass through

[27] Holmes v. Machay, etc., (1899), 2 Q. B. 319, 1 W. C. C. 13; Brydon v. Stewart, (1855), 2 Macq. H. L. 30; Cross, Tetley & Co. v. Catterall (not reported—referred to in Sharp v. Johnson, (1905), 2 K. B. 139, 141).

[28] Collins, M. R., in Smith v. Normanton, (1903), 1 K. B. 204, 5 W. C. C. 14.

[29] Hoffman v. Knisley Bros., 199 Ill. App. 330, 15 N. C. C. A. 235.

[30] Great Lakes Dredge & Dock Co. v. Totzke, 121 N. E. (Ind. App.) 675.

[30a] Wabash Ry. Co. v. Industrial Com., 294 Ill. — (June, 1920).

the door into her employer's store, it appearing that the steps were entirely on the employer's premises, and at the time of her fall the employee was returning from lunch, for the purpose of resuming her work for the afternoon, it was held that the accident was within the law.[31] It was held that where a workman who was employed in a quarry where there was blasting, was injured by a piece of flying stone as he was leaving the premises, he was injured in the course of his employment, although he would have been outside the danger zone had he not stopped at a commissary maintained by the employer on the premises.[32] And a workman who was injured while going to a locker room, after quitting work, it appearing that he was not violating any rules at the time, was held entitled to compensation.[33] Where an ice house laborer was crossing the ice on a pond on the employer's premises, after he had quit work and was on his way home, he was held to be still within the employment.[34]

It is held that it cannot be assumed that the Act extends to the workman, however, on any and all parts of the employer's premises.[35] It was also held that where an employee on the way to the entrance to the employer's plant where he was to check out, in accordance with the rules, was injured while attempting to board an engine going in that direction, he could not recover, as the boarding of the engine was not in the interest of the employer, nor for the purpose of expediting the employer's work.[36] Also, those cases where the employee takes a short cut to the place of employment, out of the usual course, are generally held not to be within the Act;[37] or

[31] Halletts Case, 121 N. E. (Mass.) 503, 16 N. C. C. A. 755.

[32] Merlino v. Connecticut Quarries Co., 104 Atl. (Conn.) 396.

[33] Chludzinski v. Standard Oil Co., 162 N. Y. Supp. 225, 15 N. C. C. A. 267. See also Romani v. Shoal Coal Co., 271 Ill. 360; Pace v. Appanoose Co., 168 N. W. (Ia.) 916.

[34] In re Stacy, 114 N. E. (Mass.) 206, 15 N. C. C. A. 244.

[35] Hoskins v. J. J. Lancaster, (1910), 26 T. L. R. 612, 614, 3 B. W. C. C. 476; Casualty Co. of America v. Industrial Accident Commission, 169 Pac. (Cal.) 76, 15 N. C. C. A. 233; Baltimore Car Foundry Co. v. Ruzicka, 104 Atl. (Md.) 167, 17 N. C. C. A. 379, 945.

[36] Indiana Steel Co. v. Lambert, 118 N. E. (Ind. App.) 162, 17 N. C. C. A. 251.

[37] Ames v. N. Y. Cent. R. R. Co.,

where the workman, after changing his clothes and starting to leave the premises, turns back out of the regular course for leaving the premises, to speak to a fellow employee;[38] also, where an employee is injured while standing in the street adjoining the employer's premises, where he is exposed to the risks common to the general public.[39] However, where the employee is called in an emergency, and is expected to report for duty at the earliest possible moment, a recovery has been permitted although the accident happened while the workman was taking a short cut, and is struck by a train operated by another company.[40] And where the employee sleeps on the premises, and in going to his place of work in the morning, is injured, he is entitled to compensation, even though by reason of an act which might be considered negligent, negligence being no bar to a recovery.[41]

It has been held, however, that a workman who was killed on the employer's premises while leaving them by a short cut which other workmen were in the habit of using, but which the workman in question had never used before, was within the terms of the Act.[42]

Also, where a workman returning from work, took a course which was unnecessary to take, but one which he usually took, with the knowledge of his employers, and which was a short cut across the premises of and under the control of the employers, and where he was injured by a truck, it was held he was entitled to the benefits of

165 N. Y. Supp. 84, 15 N. C. C. A. 279; Foster-Latimer Lumber Co. v. Industrial Commission, 167 N. W. (Wis.) 453, 16 N. C. C. A. 753, 927; M'Laren v. Caledonian Ry. Co., (1911), S. C. 1075, 48 Sc. L. R. 885, 5 B. W. C. C. 492; Walters v. Staveley Coal Co., (1910), 105 L. T. 119, 4 B. W. C. C. 303; Gilmour v. Dorman, (1911), 105 L. T. 54, 4 B. W. C. C. 279; *contra*, Bylow v. St. Regis Paper Co., 166 N. Y. Supp. 874, 16 N. C. C. A. 152; M'Kee v. Great Northern Ry. Co., (1908), 42 Ir. L. T. 132, 1 B. W. C. C. 165.

[38] Urban v. Tepping Bros., 172 N. Y. Supp. 432, 17 N. C. C. A. 946.

[39] Balboa Amusement Producing Co. v. Industrial Accident Commission, 171 Pac. (Cal.) 108, 16 N. C. C. A. 906.

[40] In re Maroney, 118 N. E. (Ind. App.) 134, 15 N. C. C. A. 242.

[41] F. B. Beasman & Co. v. Butler, 105 Atl. (Md.) 409.

[42] McKee v. Gt. Nor. Ry. Co., (1908), 42 Ir. L. T. 1 B. W. C. C. 165.

the Act;[43] also, where a miner was injured going through a gate which was about 100 yards from the place where he went to get his lamp, preparatory to going below to work.[44] A sewer digger who while riding with his employer in the latter's automobile truck at the employer's request, for the purpose of getting material for use at the place where the excavation for the sewer is going on, is injured by a collision between the truck and a street car, is within the protection of the Act, even though he did not reach the place where the excavating work was being done.[45] Also, where a workman had left a lumber camp where he was working, to go on a vacation, and was injured while riding on a train to the central logging camp where he was to receive his pay, he was held to be within his employment, it appearing that the arrangements as to going in this manner to the central camp was for the convenience of the employer.[46]

The Court of Session of Scotland says: "There are only two ways of looking at it. Either you must have a rule that the moment a man enters the premises of his master, he is then in the course of his employment, or you must have a rule that he must come to some point at which he enters upon the work which he has to do, and that only then does he begin to be within the course of his employment."[47]

§ 38. Going to and from work. (3). *Exceptions arising by reason of circumstances requiring overtime, etc.* This class includes those cases where the workman in the course of his regular duties arrives at the place of employment before the hour designated for beginning work, under circumstances which appear to make his presence

[43] Gane v. Norton Hill Co., (1909), 2 K. B. 539, 2 B. W. C. C. 42.

[44] Hoskins v. J. J. Lancaster, (1910), 26 T. L. R. 612, 614, 3 B. W. C. C. 476; *contra*, Anderson v. Fife Coal Co., Ltd., (1910), S. C. 8, 3 B. W. C. C. 539; Hendry v. United Collieries, (No. 2, 1910), S. C. 709, 47 S. L. R. 635, 3 B. W. C. C. 567.

[45] Scully v. Industrial Commission, 284 Ill. 567, 17 N. C. C. A. 949.

[46] Hackley-Phelps-Bonnell Co. v. Industrial Commission, 162 N. W. (Wis.) 921, 14 N. C. C. A. 438, 15 N. C. C. A. 278.

[47] Anderson v. Fife Coal Co., (1910), S. C. 8, 3 B. W. C. C. 539.

there reasonably necessary or proper, and while, being so on the premises, he is preparing himself for his daily work, or after leaving his place of work, returns temporarily, for some purpose within the general line of his duty. These cases are generally held to fall within the course of the employment, and as such entitled to the benefits of the Act. The same rule applies with reference to injuries sustained after closing time, where the act which results in injury was for the general benefit of the employer, and reasonable under all the circumstances. For example, a workman engaged in the construction of a nickelodeon was severely burned by hot tar which he was carrying in a bucket. It was a few minutes after 5 P. M., the regular closing time, and it was contended that for this reason there was no liability. In awarding compensation it was said that the employee "filled an empty bucket when it was lowered from the roof, because he thought his employer wanted it filled, and not for his own purposes."[48] In another case the employee left the factory at about 4 o'clock. In the evening he passed by the factory and saw a light, and went in and found the employer tying up two boxes of cigars. He had been asked by the proprietor to deliver some cigars, and called for the purpose of getting them. After some talk about other matters, the employer asked him to deliver the cigars, and take the bill with him, presumably for collection, and in leaving the factory, he fell down stairs and was killed. The court held that if the employee had been injured during working hours, it would make no difference that his service was gratuitous; if the service was incidental to the employer's business and was rendered at the employer's request it would be a part of the employment, within the meaning of the Act; that any other rule would discourage helpful loyalty, and that services rendered in the spirit of helpful loyalty, after closing time should have the same protection as the service of a drone or laggard and inasmuch

[48] Gordon v. Eby, Case No. 10, Cal. Industrial Acc. Com., March 20, 1914.

as the employee left the factory for the sole purpose of helping the master in his business, his dependents should be entitled to recover.[49] In another case, after the employee had finished his work for the day, he went to a building where a fellow employee was working, and proceeded to help him. While assisting the fellow workman in fastening the links of a chain together he pinched his finger, causing a blister, and infection set in causing his death. It was held that his action was reasonable, and that compensation should be allowed.[50] The burden of proof as to whether the conduct of the workman was reasonable, under such circumstances, would probably be upon the workman.[51]

§ 39. Going to and from work. *Overtime cases held covered by the Act.* The following overtime cases have been held covered by the English Act: a workman temporarily doing the work of another employer's man;[52] returning to premises after leaving work, for the purpose of getting his pay,[53] and this, even though upon receiving such pay, the employment relation ceased,[54] and during the period of time occupied in going to and from the place of payment, which was some distance away,[55] and where employee, with fellow workmen, were accustomed to arrive by train, at the place of employment, some twenty minutes prior to actual time for beginning work, and to deposit ticket in office, and secure breakfast, if desired, and while so depositing ticket, fell into excavation, and was injured,[56] and where a miner had obtained his lamp, and was waiting at the entrance of the mine to go below, it was held his employment had commenced,

[49] Grieb v. Hammerle, 118 N. E. (N. Y.) 805, 16 N. C. C. A. 897.

[50] Perdew v. Nufer Cedar Co., 167 N. W. (Mich.) 868, 16 N. C. C. A. 921, 17 N. C. C. A. 883.

[51] Morgan v. Dixon, (1912), A. C. 74, 5 B. W. C. C. 184.

[52] Henneberry v. Doyle, 46 Ir. L. T. 70, 5 B. W. C. C. 580.

[53] Lowry v. Sheffile Coal Co., (1907), 24 T. L. R. 142, 1 B. W. C. C. 1; Riley v. William Holland & Sons, (1911), 1 K. B. 1029, 4 B. W. C. C. 155.

[54] Molloy v. South Wales Colliery Co., (1910), 4 B. W. C. C. 65; and Riley v. Holland & Sons, (1911), 1 K. B. 1029, 4 B. W. C. C. 155.

[55] Nelson v. Belfast Corp., (1908), 42 Ir. L. T. 223, 1 B. W. C. C. 158.

[56] Sharp v. Johnson, (1905), 2 K. B. 139, 7 W. C. C. 28.

and he was entitled to the benefits of the Act.[57] And where an employee spent his off time during the day, as well as at night, in a bunk furnished by the employer, and was injured by a straw falling into his throat, causing infection, he was held entitled to compensation.[58]

§ 40. Going to and from work. (4). *Interruptions in the employment.* Many cases arise in which the workman is properly or improperly interrupted during the course of his employment, which call into question any accident which may occur during such interruption. Furthermore, the terms of the employment, with reference to whether the workman is engaged by the day or by the month or year, frequently have an important bearing upon the question of whether the accident comes within the terms of the Act. Certain employments are continuous in their nature, and others are casual or intermittent. The cases hold that in continuous employments the period of the workman's employment will oftimes include hours when he is not actually at work. In intermittent employments, the period of employment will generally be held to coincide with the actual working hours, and that during all other times the workman stands on exactly the same footing as any other "member of the public."[59] Even in the cases of so-called intermittent employments, however, accidents which happen during the period of any proper interruption, will be held to be covered by the Act. The rule has been stated as follows: "I do not think that the protection given by the Act can be confined to the time during which a workman is actually engaged in manual labor, and that he would not be protected during the intervals of leisure which may occur in the course of his daily employment. A workman is not a machine and must be treated as likely to act as workmen ordinarily would during such intervals; and, as regards any reasonable use which, while on the employer's premises, he may make of moments when

57 Fitspatrick v. Hindley, (1901), 4 W. C. C. 7.

58 Holt Lumber Co. v. Industrial Commission, 170 N. W. (Wis.) 366.

59 Benson v. Lancashire & Y. R. Co., (1904), 1 K. B. 242, 6 W. C. C. 20.

he is not actually working, I must not be supposed to say that he would be thereby deprived of the protection of the Act."[60] The following interruptions have been held proper, and not to take the workman out of the employment: Going to order lunch, and injured while still on the premises;[61] a workman taking advantage of an opportunity afforded by the employer to eat his meals on the premises, or at the place of his work;[62] and this regardless of whether he is paid for the time taken at meals or not;[63] and where the exigencies of his work require him to leave his place of work to get food.[64] An injury to an employee on his way to lunch at the noon hour as a general rule arises out of the employment, and it has been held to make no difference if the accident happens off the premises of the employer if the employee uses premises which he has a right to use, and which provide the only available way to reach the point to which he goes for lunch.[65] But this rule does not apply where the employee chooses to go to a dangerous place where his employment does not necessarily carry him, or where he increases the danger, while on a mission unconnected with the employer's business, and merely for his own pleasure.[66] But it has been held that the janitress of an apartment house, living in one of the apartments, is not entitled to compensation for injuries sustained while eating her lunch in her own apartment.[67] Compensation has been allowed where the workman leaves the premises for the purpose of getting a drink of water;[68] or relieving nature;[69] and going to use the

[60] Benson v. Lancashire & Y. R. Co., (1904), 1 K. B. 242, 6 W. C. C. 20.

[61] Rainford v. Chicago City Ry. Co., 289 Ill. 427.

[62] Haller v. Lansing, 162 N. W. (Mich.) 335, 14 N. C. C. A. 949; Racine Rubber Co. v. Industrial Commission, 162 N. W. (Wis.) 664, 15 N. C. C. A. 280; Blovelt v. Sawyer, (1904), 1 K. B. 271, 6 W. C. C. 16; Morris v. Lambeth, (1905), 22 T. L. R. 22, 8 W. C. C. 1.

[63] Blovelt v. Sawyer, (1904), 1 K. B. 271, 6 W. C. C. 16.

[64] Low v. Steam Fishing Co., (1909), A. C. 523, 2 B. W. C. C. 56.

[65] Nelson Construction Co. v. Industrial Commission, 286 Ill. 632.

[66] *Ibid;* Weis Paper Mill Co. v. Industrial Com., 293 Ill. 284.

[67] Lauterbach v. Jarett, 178 N. Y. Supp. 480.

[68] Keenan v. Flemington Coal Co., (1902), 40 S. L. R. 144.

[69] Welden v. Skinner & Eddy

telephone, on employer's business.[70] If the workman voluntarily interrupts the employment himself, and for his own purposes leaves his place of work and is injured, he cannot reasonably claim that the accident arose out of the employment.[71] For example, a seaman went ashore for his own purposes. When he returned late at night he found that the ship had in the meantime been moved to another part of the dock. He proceeded to make his way to the ship, along the dock side, which had many railway lines upon it. He was injured by a train on the docks, about 200 yards from the ship. It was held the accident did not arise out of the employment.[72] An employee was engaged as the driver of an automobile truck. He was accustomed to remain about the office awaiting orders at times, during working hours. No regular lunch time was provided by the employer. On the day the accident occurred, the employee had been ordered out about 11 o'clock A. M. to haul a load of pipe from a certain establishment to the depot. He procured his load, and trucked it as far as the employer's office, where he arrived at 12 o'clock, noon. The office was directly on his way to the depot. The depot was closed between 12 and 1 o'clock. The employee stayed at the office, on that account, instead of proceeding to his destination. He remained in the office from 12 to 12:45 when he left the office and started to cross the street toward his truck, and was run down by an automobile. It was held that at the time he was struck he had not left his employment, that he was within the hours of his employment, that he was at a place where he had a right to be, that he had left his truck in a place where he had a right to leave it, and that his death therefore was occasioned by an acci-

Corp., 174 Pac. (Wash.) 452, 17 N. C. C. A. 691, 959; Rose v. Morrison, (1911), 105 L. T. 2, 4 B. W. C. C. 277.

[70] Mueller v. Industrial Board, 283 Ill. 148, 16 N. C. C. A. 902; Holland-St. Louis Sugar Co. v. Shraluka, 116 N. E. (Ind.) 330, 15 N. C. C. A. 271.

[71] Nelson Construction Co. v. Industrial Commission, 286 Ill. 632.

[72] Biggart v. Owners S. S. Minnesota, 5 B. W. C. C. 68; see also Kitchenham v. Owners of S. S. Johannesburg; and Leach v. Oakley, (1911), 1 K. B. 523, 4 B. W. C. C. 91, (1911), A. C. 417.

dent arising out of and in the course of the employment.[73]

§ 41. Interruptions in the employment. *Same subject.* The reasoning of Fletcher Moulton, L. J. in the leading case of Leach v. Oakley,[74] has been largely followed, as a guide in determining the rights of workmen who leave their employments temporarily, either with or without leave. While the case which was there under consideration was an accident to a sailor, resulting in his death, the principles laid down apply with equal force, to all workmen injured under similar circumstances. The deceased was a seaman on board the S S Portslade, and had gone ashore, with leave, for purposes of his own. The Portslade was moored to another vessel, which was made fast to the quay, so that in order to board the Portslade, the deceased had first to cross the deck of the other vessel. There was evidence that the deceased, on his return, safely boarded the other vessel, and got onto the gangway between the two ships. The gangway, however, gave way, and he fell into the water and was drowned. It was held that the deceased met with his death by an accident arising out of and in the course of his employment.

"The second issue was whether the accident arose 'out of' his employment. * * * It is not dependent on whether the seaman is on board the vessel or not. A seaman would be perfectly entitled to occupy his hours of leisure in playing leapfrog or skylarking if he did not thereby break any rules. But an accident that occurs to him through his so doing might not be an accident arising out of his employment. Similarly, if a seaman went on shore in his hours of leisure, with leave, and got injured in the traffic, that would not be an accident arising out of his employment. By going on shore with leave, the seaman does not interrupt the course of his employment, but any accident that occurs during the period of his being on shore is generally, if not neces-

[73] Burton Auto Transfer Co. v. Industrial Accident Commission, 174 Pac. (Cal.) 72, 17 N. C. C. A. 955.

[74] 4 B. W. C. C. 91.

sarily, due to a danger to which he is exposed as a member of the public, and not as one of the crew of the ship, and therefore is one which does not 'arise out of his employment.' But if, whether in his hours of leisure or not, it becomes necessary for him, in fulfilment of his employment, to get on board his vessel, an accident occurring in his doing so, is normally an accident arising out of his employment, because it is due to a danger incidental to his service in that ship. In the cases before us, the accident occurred on the return of the seaman to the ship immediately prior to his actually getting on board. This is the critical moment when the dangers to which he is exposed change from being of the one class to being of the other class, and it will frequently be a difficult task to draw the line between the two. But I do not think it difficult to lay down the general principle by which our decisions ought to be guided. The return to the ship is in the course of his employment, but the risks do not become risks arising out of his employment until he has to do something specifically connected with his employment on the ship. Thus, if the risk is one due to the means of access to the ship, as in Moore v. Manchester Liners, Ltd., the accident is rightly said to arise out of his employment; but if the accident is shown to arise from something not specifically connected with the ship, it cannot be said to arise out of his employment. I do not think that the dividing line is when he actually touches the ship, or the special means of access thereto. For instance, if it was shown that when the sailor returned to the ship there was a dense fog, and that in trying to find the gangway, which I will suppose was not lighted, he fell into the water and was drowned, I think that the accident would arise out of his employment. But if all that is shown is that it occurred during his return to the ship, but while he was still on the shore, and before he had taken any specific step toward getting on board the vessel, I think that it would not thereby be established that the accident arose out of his employment.'' [75]

[75] Leach v. Oakley, (1911), 1 K. B. 523, 4 B. W. C. C. 91.

§ 42. Scope of the employment. In addition to the work being within the period of the employment, it must also be such work as "a man so employed may reasonably do."[76] If it is not such work as is either expressly authorized, or is reasonably necessary or proper to do, the workman cannot have the benefit of the Act for any accident that arises therein. If the work is such as falls within the legitimate scope of his duty, the fact that he does it in the wrong way does not necessarily exclude him from the benefits of the Act,[77] or remove his act from the class of cases held to arise out of and in the course of the employment.[78] For example, a watchman blasting stumps with dynamite to secure fuel for his cabin was injured by a flying piece of wood and it was held that inasmuch as the procuring of fuel to protect himself from the cold was an incident of the employment, the fact that he did it in a careless manner should not deprive him of his right to compensation.[79] And where an employee fell asleep while sitting before a fire waiting for an elevator which he required for his work, and while sleeping was injured by his clothing catching fire, it was held that the injury occurred while the employee was at a place where he had a right to be, and at most his falling asleep was mere negligence which would not prevent a recovery.[80]

The workman will not be permitted to do work outside the line of his duty as such employee, and add to his em-

[76] Moore v. Manchester Liners, Ltd., (1910), A. C. 498, 3 B. W. C. C. 527; International Harvester Co. v. Industrial Board, 282 Ill. 489.

[77] In re Ayres, 118 N. E. (Ind.) 386, 16 N. C. C. A. 900; 17 *Id.* 377; Benson v. Bush, 178 Pac. (Kan.) 747; Nordyke & Marmon Co. v. Gallavan, 121 N. E. (Ind. App.) 446.

[78] Ocean Accident & Guaranty Corp. v. Pallaro, 180 Pac. (Col.) 95, 12 N. C. C. A. 73; Astley v. Evans, (1911), A. C. 674, 4 B. W. C. C. 319; Robertson v. Allan, 77 L. J. (K. B.) 1072, 1 B. W. C. C. 172; Douglas v. United Minerva Iron Co., (1900), 2 W. C. C. 15, 2 N. C. C. A., 881n; McNicholas v. Dawson, (1899), 1 Q. B. 773, 1 W. C. C. 80; Durham v. Brown, (1898), 1 F. 279, 36 S. L. R. 190; Richard v. Indianapolis Abbatoir Co., 102 Atl. (Conn.) 604, 15 N. C. C. A. 269.

[79] Ocean Accident & Guaranty Corp. v. Pallaro, 180 Pac. (Col.) 95, 12 N. C. C. A. 73.

[80] Richard v. Indianapolis Abbatoir Co., 102 Atl. (Conn.) 604.

ployer's responsibility for compensation for accidents. This is true, even where the employee in good faith undertakes such outside work in furtherance of the interests of his employer.[81] The question of what is, and what is not within the scope of the employment, is one of fact.[82]

§ 43. Cases outside the scope of the employment. Thus, an accident was held not to arise out of the employment where a brakeman, whose duty it was to walk behind a lorry, ready to apply the brakes when directed, in disobedience of the rule, rode upon the lorry beside the driver and in jumping off to apply the brakes fell and was injured;[83] where a garage employee, after taking a passenger by automobile to the destination directed by his employer suggested to the passenger that they continue their drive while waiting for a train, and after riding some distance further is killed by the passenger who had suddenly become insane;[84] where a workman left the building where he was required to be in order to perform his work and went upon switch tracks belonging to the employer, but not connected in any way with the duties of the employee and was run over by a box car;[85] where an employee engaged in delivering a box of books to a house, carried them upstairs at the request of a woman whom he "hated to refuse" and in so doing was injured;[86] where a messenger boy climbed on a passing vehicle, not owned or controlled by his employer;[87] where a flagman whose duty it was to ride in the rear car, rode on the draw bar and was in-

[81] Dietzen v. Industrial Board, 279 Ill. 11, 15 N. C. C. A. 158; Bischoff v. American Car Foundry Co., 157 N. W. (Mich.) 34, 14 N. C. C. A. 134; 15 *Id.* 155.

[82] Pittsburgh C. C. & St. L. Ry. Co. v. Gallavan, 121 N. E. (Ind. App.) 446, 7 N. C. C. A. 114; Losh v. Evans & Co., (1902), 19 T. L. R. 142, 5 W. C. C. 17.

[83] Revie v. Cumming, (1911), S. C. 1032, 48 Sc. L. R. 831, 5 B. W. C. C. 483.

[84] Central Garage v. Industrial Commission, 286 Ill. 291.

[85] Piske v. Brooklyn Cooperage Co., 78 So. (La.) 734, 16 N. C. C. A. 929.

[86] Carnahan v. Mailometer Co., 167 N. W. (Mich.) 9, 16 N. C. C. A. 882.

[87] State ex rel. Miller v. District Court of Hennepin County, 164 N. W. (Minn.) 1012, 15 N. C. C. A. 256.

jured;[88] where an unskilled workman, in violation of orders, undertook to clean machinery, to occupy his idle time;[89] where a miner going from one part of the mine to another rode on a coupling between two cars, in violation of the rules;[90] and where a workman undertook to do the work of the engineer, and slipped while getting down from the engine;[91] where the driver of a canal boat, undertook to steer and manage the boat, contrary to instructions;[92] where a miner fired a shot in the mine, in violation of the rules, which required shot to be fired only by regular shot-firer;[93] where an employee in an electric power house, dusted a switchboard, contrary to rules;[94] where a boy cleaned machinery, which it was the duty of others to clean;[95] where a woman employed to work on a particular machine only, tried to see if she could run another.[96] The modern factory usually includes within the fields of its operations many fairly distinct lines of work, from that of the roustabout, engaged in the ordinary labor which almost anyone may perform, to that of the expert mechanic, which can be done safely by those only with skill and experience. The difference between these various kinds of work was always recognized by the common law, and it was held to be negligence for the master to require of the servant, without warning or instructions, the performance of outside work or work more dangerous than that which the latter had contracted to perform. Such classification of work exists in the very nature of things, and as much under the statute as at common law. Its recognition is required by any proper organization of a factory, not only for efficiency but as well for the purpose of guarding

[88] M'Keown v. M'Murray, (1911), 45 Ir. L. T. 190.

[89] Lowe v. Pearson, (1899), 1 Q. B. 261, 1 W. C. C. 5, 2 N. C. C. A. 877n.

[90] Powell v. Bryndu Colliery Co., 5 B. W. C. C. 124.

[91] M'Allan v. Perthshire County Council, (1906), 8 F. 783, 43 S. L. R. 592.

[92] Whelan v. Moore, (1909), 43 Ir. L. T. 205, 2 B. W. C. C. 114.

[93] Kerr v. Wm. Baird & Co., Ltd., (1911), S. C. 701, 4 B. W. C. C. 397.

[94] Jenkinson v. Harrison, (1910), 4 B. W. C. C. 194.

[95] Naylor v. Musgrave Spinning Co., (1911), 4 B. W. C. C. 286.

[96] Cronin v. Silver, (1911), 4 B. W. C. C. 223.

against accident and injury. And if the workman, when there is no emergency should of his own volition, see fit to intermeddle with something entirely outside the work for which he is employed, he ought not to be allowed compensation upon the mere plea that he thought his act would be for the benefit of his employer. That plea may be of value under some circumstances, but it cannot authorize an employee voluntarily to take upon himself the performance of work for which he was not employed.[97]

§ 44. Disobedience—Wilful misconduct, etc. The mere fact that the workman may be acting contrary to rules will not necessarily deprive him of the benefits of the Act, if, while so acting, he is engaged in the general line of his employment.[98] The leading English case on this point is Whitehead v. Reader, (1901), 2 K. B. 48. In this case it was part of the workman's duty to sharpen his tools on a grind stone driven by steam power. The workman had instructions not to touch the machinery. A belt used to run the machine having slipped off he tried to replace it, and was injured. It was held that he might receive compensation. The court said that it was not every breach of a master's orders which would terminate the servant's employment, within the meaning of the Act, but that regard must be had to the character and effect of the master's orders. In this case the order did not limit the sphere of employment so as to forbid contact with machinery, and the act of the workman in replacing the belt was not so remote from his ordinary duties that it could be fairly said that it did not arise out of the employment.

[97] Dietzen v. Industrial Board, 279 Ill. 11, 15 N. C. C. A. 158; Bischoff v. American Car Foundry Co., 157 N. W. (Mich.) 34, 14 N. C. C. A. 134, 15 N. C. C. A. 155.

[98] Chicago Railways Co. v. Industrial Board, 276 Ill. 112, 15 N. C. C. A. 164; Dietzen v. Industrial Board, 279 Ill. 11, 15 N. C. C. A. 158; Mississippi Power Co. v. Industrial Commission, 289 Ill. 353; Northern Pacific Steamship Co. v. Industrial Accident Commission, 163 Pac. (Cal.) 910, 17 N. C. C. A. 1065; Kent v. Boyne City Chemical Co., 162 N. W. (Mich.) 268, 15 N. C. C. A. 165; Frint Motor Car Co. v. Industrial Commission, 170 N. W. (Wis.) 285; Mawdsley v. W. L. Col. Co., 5 B. W. C. C. 80; but see Lobuzek v. American Car & Foundry Co., 161 N. W. (Mich.) 139, 14 N. C. C. A. 423.

The disobedience must be such as amounts to entering a prohibited employment.[99]

The rule announced by American courts is substantially the same. Disobedience of a rule or an order which limits the sphere of employment, necessarily takes the disobeying employee out of the employment, but wrongful conduct, although amounting to disobedience of express orders, if within the sphere of employment will not forfeit the right to compensation.[100] If the act was incidental to his work, and not different in kind from that which he was employed to do, even though he did it in a prohibited and thoughtless or impulsive manner, he is held to be acting within his employment.[1] If it is disobedience merely as to way in which the work should be done, and the work is the work which the employee is expected to do, and it is done at a place it is expected to be done, the disobedience will not defeat recovery.[2] But where the act is no part of the work which the employee has to do, and he is expressly forbidden to do it, the accident resulting therefrom cannot be held to arise out of the employment.[3] But a mere warning or protest against the employee doing the act which resulted in injury is not to be construed as a command so as to preclude the right to compensation on the ground of disobedience.[4] And where the disobedience does not cause the accident for which compensation is claimed, the disobedience is immaterial and will not bar the right to compensation.[5] The test in all cases seems to be whether the thing done in disobedience of orders or rules is different in kind from anything which the workman is expected or required to do and which he has been expressly prohibited from doing, or whether it is an incidental violation of

[99] Conway v. Pumpherston Oil Co., 4 B. W. C. C. 392, 48 Sc. L. R. 632.

[100] Mississippi Power Co. v. Industrial Commission, 289 Ill. 353.

[1] Chicago Railways v. Industrial Board, 276 Ill. 112, 15 N. C. C. A. 164; Macechko v. Bowen Mfg. Co., 166 N. Y. Supp. 822.

[2] Kaloszynski v. Klie, 102 Atl. (N. J.) 5, 15 N. C. C. A. 160.

[3] Dietzen v. Industrial Board, 279 Ill. 11, 15 N. C. C. A. 158.

[4] General Accident F. & L. Assur. Corp., Ltd. v. Evans, 201 S. W. (Tex.) 705, 16 N. C. C. A. 919; 17 *Id.* 382.

[5] Great Western Electro-Chemical Co. v. Industrial Accident Commission, 170 Pac. (Cal.) 165, 17 N. C. C. A. 383.

rules or regulations of which he becomes guilty, while performing work within the general line of his duty.

Some of the compensation laws expressly provide that compensation shall be denied where the workman is guilty of "serious"[4] or "intentional misconduct" or wilful failure to use safety guards, etc. Serious or intentional or wilful misconduct as those terms are used in compensation laws means something more than mere negligence, or even gross or culpable negligence. It has been held that they involved "conduct of a quasi-criminal nature, the intentional doing of something, either with the knowledge that it is likely to result in serious injury, or with a wanton and reckless disregard of its probable consequences."[6] To constitute wilful misconduct the act must be characterized by intentional impropriety, and not merely by thoughtlessness or heedlessness.[7] Such misconduct is a matter of defense, and must be proved. And whether the workman has been guilty of wilful or serious or intentional misconduct is a question of fact.[8]

A janitor whose duties were to sweep up and clean different parts of an industrial plant was instructed never to enter what was known as the "33,000-volt room." He was found dead in this room, with a bucket, some dirty water and dirty clothes about, having apparently been at work cleaning the machinery. No one witnessed the accident. The defense of wilful misconduct not having been pleaded, compensation was allowed.[9] Mere violation of a known rule in not shutting down machinery when the rollers of an iron ore crusher became choked, and attempting to relieve the choke-up while the machinery was moving, was held not to be wil-

[6] Beckles' Case, 119 N. E. (Mass.) 653, 17 N. C. C. A. 434; F. B. Beasman & Co. v. Butler, 105 Atl. (Md.) 409; Indianapolis Light & Heat Co. v. Fitzwater, 121 N. E. (Ind. App.) 126.

[7] Baltimore Car Foundry Co. v. Ruzicka, 104 Atl. (Md.) 167, 17 N. C. C. A. 379, 945.

[8] McMinn v. C. Kern Brewing Co., 168 N. W. (Mich.) 542, 17 N. C. C. A. 265, 957.

[9] Northern Indiana Gas & Electric Co. v. Pietzvak, 118 N. E. (Ind. App.) 132.

ful failure to use guards.[10] And compensation will not be denied for failure to use a guard on machinery where the proper guard has not been furnished by the employer;[11] or where several guards for the same machine are customarily used by the employee, and by reason of his failure to use the safer one, injury results.[12] Under the California Act, failure of the employee to wear goggles to protect his eyes as required by the safety rules of the employer, was held to be serious and wilful misconduct.[13] And where the workman deliberately removes a guard required by law to be used on the machine and he is injured by reason thereof, his act amounts to wilful misconduct of such a character as to deprive him of compensation.[14]

§ 45. Disobedience—Wilful misconduct, etc.—illustrative cases. An employee died from inhaling noxious gases which had accumulated in a portion of the mine. The part of the mine infected by these gases was closed off and marked "danger," and all workmen were notified not to enter therein. Deceased, who worked in the gaseous section of the mine prior to the time it was closed off, left his mining machinery and some tools there, and in attempting to get them was overcome with the gas. It was held that under the circumstances his departure from the orders of the employer was a mere negligent act on his part which would not bar his claim.[15] Where a man employed to drill a hole in a stall to let out an accumulation of gas, entered the stall from below to ascertain the direction of the drill, although the entrance had been closed, and he had been ordered not to enter, compensation was allowed.[16] An employee was

[10] Thorn v. Edgar Zinc Co., 186 Pac. (Kan.) 972; see also Peru Basket Co. v. Kuntz, 122 N. E. (Ind. App.) 349; Diestelhal v. Industrial Accident Commission, 164 Pac. (Cal.) 44, 15 N. C. C. A. 149.

[11] Wick v. Gunn, 169 Pac. (Okla.) 1087.

[12] Haskell v. Barker Car Co., 119 N. E. (Ind. App.) 811, 17 N. C. C. A. 253, 385.

[13] McAdoo v. Industrial Accident Commission, 181 Pac. (Cal.) 400.

[14] Bay Shore Lumber Co. v. Industrial Accident Commission, 172 Pac. (Cal.) 1128, 17 N. C. C. A. 387.

[15] Gurski v. Susquehanna Coal Co., 104 Atl. (Pa.) 801, 17 N. C. C. A. 943.

[16] Harding v. Brynddu Col. Co., Ltd., (1911), 2 K. B. 747, 4 B. W.

engaged as a sand mixer. He was making an adjustment upon the sand machine which it was his duty to assist in operating, and while making such adjustment he accidentally fell into the machine which was in motion at the time, and was crushed to death. It was contended that deceased had been given instructions not to make any alterations until he stopped the machine, but it was held that the work he was doing was incidental to his employment, and although a violation of the instructions, such violation was not sufficient to take him out of the employment.[17] The employee was the driver of a street flushing motor vehicle. He was forbidden by his employers to permit any persons to ride with him. Nevertheless, at the time of the accident he permitted another experienced driver to operate the car, and while it was moving forward, the employee was engaged in the manipulation of a lever which controlled the discharge of the water. He reached over to pick up a wrench lying on the running board, and in so doing fell to the ground and suffered severe injuries. He was held to be within his employment, and entitled to compensation.[18] Compensation was not denied on the ground of violation of the rules where it was shown to be the practice of the workmen, known to the employers, to ignore the rules, and to act in the way the injury was caused.[19] An engineer was held entitled to compensation, who was injured while fixing up a stove in his room, contrary to orders, which was reasonably necessary for his comfort while working;[20] also a workman employed to oil machinery, was strictly forbidden to oil it while in motion; he had been seen to do so and warned against the practice; he did so again, and re-

C. C. 269, 2 N. C. C. A. 864n; see also Conway v. Pumpherston Oil Co., Ltd., (1911), S. C. 660, 4 B. W. C. C. 392.

17 National Car Coupler Co. v. Marr, 121 N. E. (Ind. App.) 545.

18 Employers' Liability Assur. Corp., Ltd. v. Industrial Accident Commission, 177 Pac. (Cal.) 171, 17 N. C. C. A. 942.

19 Logue v. Fullerton, (1901), 3 F. 1006, 38 S. L. R. 738; Douglas v. United Minera Iron Co., (1900), 2 W. C. C. 15, 2 N. C. C. A. 881n; Johnson v. Narshall, (1906), A. C. 409, 8 W. C. C. 10, 2 N. C. C. A. 865n.

20 Edmunds v. S. S. Peterson, (1911), 28 T. L. R. 18, 5 B. W. C. C. 157.

ceived severe injuries from which he died;[21] and a weighing clerk going outside to help bring in a heavy package;[22] and a groom, exercising a horse, rode him, when he had been told to lead him but not to ride him.[23]

But where an employee of a mining company is hired to sit on top of a coal chute to pick rocks and slate from the coal, an injury sustained by him while helping to move cars, contrary to express orders, was held to take him out of the employment.[24] And where an employee in order to secure fresh air crawled over tubs to a window which had been nailed down by the employer, to prevent danger of injury, it was held that the injury did not arise out of the employment.[25] Where a workman had been told to work at one particular point in a mine and had deliberately gone to another point where the work was easier, he was held to be acting outside the scope of his employment.[26]

Whether the employee has been guilty of disobedience such as to take him out of his employment, if a disputed question of fact, is settled conclusively by the triers of questions of fact under the statute.[27] And where proof of disobedience of the rules is attempted by evidence of a foreman that he told the deceased workman not to do the act which resulted in his death, and evidence of this character is not competent under the statute against a deceased person or those claiming under him, compensation will be allowed unless there is other proper evidence of disobedience.[28]

§ 46. Emergencies. Where a workman voluntarily performs an act during an emergency, which he has rea-

[21] Mawdsley v. W. L. Col. Co., 5 B. W. C. C. 80.

[22] Golsan v. Gilles Co., 44 S. L. R. 71.

[23] Wright v. Scott, 5 B. W. C. C. 431; see also Tobin v. Hearn, (1910), 2 Ir. R. 639.

[24] West Side Coal & Mining Co., 291 Ill. 301. See also Weighill v. S. H. Coal Co., (1911), 2 K. B. 757n, 4 B. W. C. C. 141, 2 N. C. C. A. 864n.

[25] In re Boren, 116 N. E. (Mass.) 817, 15 N. C. C. A. 261.

[26] Weighill v. S. H. Coal Co., (1911), 2 K. B. 757n, 4 B. W. C. C. 141, 2 N. C. C. A. 864n.

[27] Industrial Commission v. H. Koppers Co., 185 Pac. (Col.) 267.

[28] Zoladtz v. Detroit Auto Specialties Co., 172 N. W. (Mich.) 549.

son to believe is in the interests of his employer, and is injured thereby, it is held that he is not acting beyond the scope of his employment. For example: Where an employee hurriedly left his duties in an attempt to save the life of a fellow employee who had fallen through a hole in the floor into a quantity of hot water and was screaming for help;[29] where a man was killed, in endeavoring to capture an escaped lion;[29a] where workmen were injured in trying to stop their employer's runaway horses;[30] where an unskilled laborer helped out a machinist in trouble;[31] and where a workman employed on a quay unloading a vessel, went on board to rescue a fellow workman threatened with suffocation;[32] where a sailor finding no other means of getting aboard his vessel, jumped from the pier to the vessel,[33] where a workman riding behind a traction engine, jumped down to pick up his pipe which he had dropped;[34] where a workman, accustomed to ships, wishing to go ashore, and finding no other way available, slipped down a rope which broke.[35] The cases hold that if, in view of the circumstances under which the emergency arose, the act of the workman can be considered reasonable or necessary, the accident should be held to have arisen in the course of the employment.[36] For example, in a case which arose in California, a boy who assisted in the operation of a rolling machine, in attempting to get away from what he apprehended was a danger, fell into the gearing of the machine near where he was working, and it was held that he acted reasonably under the circumstances, and that he was therefore injured in the course of his employment. It was said in that case: "It is

[29] Dragovich v. Iroquois Iron Co., 269 Ill. 468, 14 N. C. C. A. 427.

[29a] Hapelman v. Poole, (1908), 25 T. L. R. 155, 2 B. W. C. C. 48.

[30] Rees v. Thomas, (1899), 1 Q. B. 1015, 1 W. C. C. 9, 2 N. C. C. A., 877n; Devine v. Caledonian R. Co., (1899), 1 F. 1105, 36 S. L. R. 877.

[31] Menzies v. McQuibban, (1900), 2 F. 732, 37 S. L. R. 526.

[32] L. & E. Shipping Co. v. Brown, (1905), 7 F. 488, 42 S. L. R. 357.

[33] Kearon v. Kearon, (1911), 45 Ir. L. T. 96, 4 B. W. C. C. 435.

[34] McLauchlan v. Anderson, (1911), S. C. 529, 4 B. W. C. C. 376.

[35] Keyser v. Burdick & Co., (1910), 4 B. W. C. C. 87.

[36] Halvorsen v. Salvesen, (1912), S. C. 99, 5 B. W. C. C. 519.

a well-settled principle that an employee is not like a part of the machine he operates, fixed to precisely the mechanical movements he must perform in order to discharge his industrial function. He is a sentient being, and may do all the things that a human being may reasonably do while in the performance of his duty, without such acts taking him outside the course of his employment." [37]

§ 47. Acts of personal business or pleasure. To say that the employer is not responsible for accidents happening to the workman while he is performing some act in pursuance of his own business or pleasure is but another way of saying that the employer is not responsible for acts done outside the scope of the employment. For such acts, where it is clear they are not reasonably necessary for the proper discharge of the workman's duty, the employer is not liable under the act.[38] The following cases fall within this class: Where an employee of a harvester company engaged in setting up binders in towns within a radius of about 75 miles of the city where the company had its headquarters, and where he was to report only after finishing his work, leaves his work unfinished and starts for the city to spend Sunday, without authority from the company, and not on any business of the company, his death in a crossing accident in which his automobile is struck by a train cannot be said to have occurred in the course of his employment;[39] nor a traveling auditor for a railroad company, giving aid to an injured person at a station, who is himself killed while trying to board a moving train.[40] Where an employee was engaged in tending generators between 12 o'clock noon and 12 o'clock midnight, went while off duty from his regular shift to a

[37] Bode v. Shreve & Co., Case 1, Cal. Industr. Acc. Com., Feb. 26, '14.

[38] Berg v. Great Lakes Dredge & Dock Co., 173 App. Div. (N. Y.) 82, 12 N. C. C. A. 74; Indiana Steel Co. v. Lambert, 118 N. E. (Ind. App.) 162, 17 N. C. C. A. 251.

[39] International Harvester Co. v. Industrial Board, 282 Ill. 489, 16 N. C. C. A. 911.

[40] Northwestern Pacific Ry. Co. v. Industrial Accident Commission, 163 Pac. (Cal.) 1000, 14 N. C. C. A. 99, 15 N. C. C. A. 220.

portion of his employer's premises where there was a hotel or boarding house run by his employer, who had an employee in charge who was accustomed to do errands for the men, and while seeking this man to give him some money the employee was injured by the explosion of a gasoline tank which the hotel keeper was repairing, it was held that the accident did not arise out of or in the course of the employment.[41] Where an employee going from a telephone to the room where he was employed stopped to talk to a fellow workman on matters unconnected with the employment, and leaned on an iron table and took hold of an electric light for the purpose of looking into a tank, merely to satisfy his curiosity, his consequent death from electric shock was held not to have happened in the course of the employment.[42] And where an employee is injured while resting on a switch track in the shade of a box car, when the track was known to be used by switch engines, and the employee could have availed himself of other shade in which to rest.[43] Also where a police officer got on a running sleigh for his own convenience in riding to a depot where he was to get some pipe, and accidentally caught his foot in the sleigh;[44] and where an employee, for his own purposes boards a moving engine;[45] and where a workman, for his own convenience, in getting home, rode upon a truck of his employer after quitting work;[46] and where a workman leaves his place of work to go to talk to a fellow employee who is about to leave the employment, and to say good-bye to him;[47] and where a workman undertakes the work of a fellow employee, by private arrangement between themselves;[48] and leaving work to watch certain other business operations

[41] Brienen v. Wisconsin Public Service Co., 163 N. W. (Wis.) 182, 15 N. C. C. A. 289.

[42] Maranofsky's Case, 125 N. E. (Mass.) 565.

[43] Weis Paper Mill Co. v. Industrial Com., 293 Ill. 284.

[44] Spinks v. Village of Marcellus, 168 N. Y. Supp. 69, 16 N. C. C. A. 670.

[45] In re O'Toole, 118 N. E. (Mass.) 303, 16 N. C. C. A. 916.

[46] Eriksson v. St. Paul St. Ry. Co., 169 N. W. (Minn.) 532, 17 N. C. C. A. 950.

[47] Di Salvio v. Menihan Co., 121 N. E. (N. Y.) 766, 17 N. C. C. A. 963.

[48] Sherer v. Industrial Accident Commission, 166 Pac. (Cal.) 318.

near by, out of mere idle curiosity;[49] where an employee, while waiting for his employer's horse to be watered, stepped from the wagon and started to cross the street to a drug store to get some tobacco and was struck by an automobile;[50] where a night watchman went to visit the captain of a boat, and while on the boat had two drinks of whiskey, and in attempting to jump from the boat toward the dock suffered injury from which he died.[51] An injury sustained while filling a bottle at a fountain, for drinking purposes;[52] where a subway guard was riding on a subway train on the way to his dentist for treatment;[53] a laundress in a hotel, doing personal laundry work after hours;[54] an attendant in a sanitarium, washing her clothes while off duty;[55] eating lunch in the basement of a building, of which the employer occupies only the first and second floors;[56] an employee in a garage killed by the accidental discharge of a revolver which he was examining with the foreman at the latter's suggestion, the revolver not being used in the employer's business;[57] a workman riding away from place of work in the cart of a fellow-workman;[58] where a ticket collector got on the footboard of a moving train, to speak to a friend and was killed;[59] where an engineer left his engine to speak to a fellow-workman, on his own business, and was killed while returning;[60] where an employee going to his work, loitered along the way, talking to friends, and

[49] Cennell v. Oscar Daniels Co., 168 N. W. (Mich.) 1009.

[50] In re Betts, 118 N. E. (Ind. App.) 551, 16 N. C. C. A. 904.

[51] King v. State Ins. Fund, 171 N. Y. Supp. 1032, 17 N. C. C. A. 938.

[52] Bolden's Case, 126 N. E. (Mass.) 668.

[53] Pierson v. Interborough Rapid Transit Co., 168 N. Y. Supp. 425, 16 N. C. C. A. 885, 17 N. C. C. A. 940.

[54] Daily v. Bates & Roberts, 120 N. E. (N. Y.) 118, 17 N. C. C. A. 946.

[55] Gernhardt v. Industrial Accident Commission, 185 Pac. (Cal.) 307.

[56] Manor v. Pennington, 167 N. Y. Supp. 424.

[57] Culhane v. Economical Garage Co., 173 N. Y. Supp. 508.

[58] Parker v. Pont, 105 L. T. 493, 5 B. W. C. C. 45.

[59] Smith v. L. & Y. Ry. Co., (1889), 1 Q. B. 141, 1 W. C. C. 1.

[60] Reed v. Great Western Ry. Co., (1909), A. C. 31, 2 B. W. C. C. 109.

occupying two hours' time in covering a distance of a mile, and finally injured in street;[61] where a workman leaving work attempted to board a car on employer's premises, belonging to employer and was injured.[62]

§ 48. Horse-play. Where the workman voluntarily indulges in horse-play, during working hours, and is injured, he is not entitled to compensation.[63] For example, where an elevator operator left his post to scuffle with another employee and his foot getting beyond the elevator floor edge was injured, it was held the injury did not arise out of the employment.[64] Also where an employee was playing and scuffling with an elevator operator and ran into the elevator after the operator, and the car having started attempted to get out and was crushed.[65] Where a boy while playing around a machine, accidentally started it and was injured;[66] where a boy at play was caught in cog-wheels;[67] where a boy was injured by a missile thrown by another boy, aimed at a third;[68] where a workman was jokingly hoisted up by a crane;[69] and where a domestic was injured by a ball thrown at her in play by a nurse.[70]

[61] Bates v. Davies' Extrs., 2 B. W. C. C. 459.

[62] Morrison v. Clyde N. Trustees, (1908), 46 S. L. R. 38, (1909), S. C. 59, 2 B. W. C. C. 99; Pope v. Hill Plymouth Co., (1910), 102 L. T. 632, 3 B. W. C. C. 341. *Contra*, see the case of Goodlet v. Caledonian Ry. Co., 39 S. L. R. 759, where it was held that an engineer who ran his engine into a station, and then walked across the tracks to talk to a fellow-workman on business of the company, and then crossed to another point to talk to a fellow-workman about his own business, and in returning was struck by an engine and killed, was covered by the Act, and injured in the course of his employment.

[63] Hulley v. Moosbrugger, 88 N. J. L. 161, 12 N. C. C. A. 795; Pierce v. Boyer Coal Co., 99 Neb. 321, 14 N. C. C. A. 350; 15 *Id.* 287; Tarper v. Western-Mott Co., 166 N. W. (Mich.) 867, 16 N. C. C. A. 923.

[64] In re Moore, 114 N. E. (Mass.) 204, 14 N. C. C. A. 139.

[65] Feda v. Cudahy Packing Co., 166 N. W. (Neb.) 190, 16 N. C. C. A. 922.

[66] Cole v. Evans, (1911), 4 B. W. C. C. 138.

[67] Furniss v. Gartside, (1910), 3 B. W. C. C. 411.

[68] Armitage v. L. & Y. Ry. Co., (1902), 2 K. B. 178, 4 W. C. C. 5. And see Falconer v. L. & G. Engineering & Iron Shipbuilding Co., (1901), 3 F. 564, 38 S. L. R. 381.

[69] Fitzgerald v. Clark, (1908), 2 K. B. 796, 1 B. W. C. C. 197.

[70] Wilson v. Laing, (1909), S. C. 1230, 46 S. L. R. 843, 2 B. W. C. C. 118; *contra*, see the case of an employee injured by a fellow workman angrily jerking a brush out of his hands: McIntyre v.

But it is usually held that where the horse-play is instigated by others, and the workman has no part in it, but is merely the victim of the horse-play, and is injured thereby, he is entitled to compensation. For example, a workman who has compressed air turned into him, rupturing an abscess, he taking no part in the horse-play, is entitled to compensation for the injury.[71] Also, where an employee operating a trip hammer, tries to knock a tin can off the hammer, placed there as a joke by a fellow employee, and is injured in the attempt, he is within the employment;[72] and where an employee was killed by a brick thrown by a fellow employee for the purpose of waking him up to get him to return to work on a night shift;[73] and a workman injured by the horse-play of a fellow employee, while standing in line to receive his pay;[74] also, where the workman is known by his master to be in the habit of indulging in dangerous play with his fellow workmen, and is retained in the master's employ, the danger of injury from such play is held to be an incident of the employment;[75] and injury caused by connecting an electric wire to an iron floor for the purpose of giving an employee an electric shock, where it was shown that such pranks were customary about the place of employment.[76] Where the horse-play is common among the employees, and is acquiesced in by the employer, it becomes a risk incident to the employment, although an accident resulting therefrom may not be foreseen or expected.[77] Whether the injury was caused by horse-play is a question of fact.[78]

Rodger, (1903), 6 F. 176, 41 S. L. R. 107.

[71] Bimel Spoke & Auto Wheel Co. v. Loper, 117 N. E. (Ind. App.) 527; *contra*, Tarpper v. Western-Mott Co., 166 N. W. (Mich.) 867, where it was held that the accident must also arise out of the employment.

[72] Knopp v. American Car Co., 186 Ill. App. 605, 5 N. C. C. A. 798.

[73] Colucci v. Edison Portland Cement Co., 108 Atl. (N. J.) 313.

[74] Pekin Cooperage Co. v. Industrial Board, 277 Ill. 53, 17 N. C. C. A. 962.

[75] Stuart v. Kansas City, 171 Pac. (Kan.) 913, 16 N. C. C. A. 923; see also State ex rel. Johnson v. District Court of Hennepin Co., 167 N. W. (Minn.) 283, 16 N. C. C. A. 921.

[76] White v. Kansas Stock Yards Co., 177 Pac. (Kan.) 522.

[77] In re Loper, 116 N. E. (Ind. App.) 324, 15 N. C. C. A. 284.

[78] Leclaire v. Glengarry Mills Inc.,

§ 49. The risk must be incident to the employment. After it is shown that the accident happened "within a time during which he is employed, and at a place where he may reasonably be during that time,"[79]—that is, within the *period* and the *scope* of the employment, the workman must also show that it was a risk incident to the employment,—that it arose because of something he was doing in the course of his employment, or because he was exposed by reason of the peculiar nature of his employment to the particular hazard which caused the injury.[80] It has been said that "the question of whether a risk arises out of and in the course of the employment does not depend on whether such risk is more than the ordinary risk incurred by other persons, but on whether the risk is one peculiar to that particular employment."[81] And where the workman departs from the employment and voluntarily incurs a risk not incidental to it, he is not protected by the Act.[82] A volunteer is one who introduces himself into matters which do not concern him, and does or undertakes to do something which he is not bound to do, which he has not been in the habit of doing with his employer's knowledge and consent, and which is not in pursuance or in protection of any interest of the master, and which is undertaken in the absence of any peril requiring him to act as on an emergency. Injuries resulting from such voluntary acts are not incidental to the employment.[83] While compensation may be had for an injury received while an employee is doing recklessly or negligently

102 Atl. (R. I.) 513, 15 N. C. C. A. 287.

[79] Moore v. Manchester Liners, (1910), A. C. 498, 3 B. W. C. C. 527.

[80] Dietzen v. Industrial Board, 279 Ill. 11, 15 N. C. C. A. 158; Mepham v. Industrial Commission, 289 Ill. 484; Swift & Co. v. Industrial Commission, 287 Ill. 564; Malone v. United Railway, 167 N. W. (Mich.) 996, 16 N. C. C. A. 904; Craske v. Wigan, (1909), 2 K. B. 631, 635, 2 B. W. C. C. 35; Warner v. Couchman, (1911), 1 K. B. 351, 353, 4 B. W. C. C. 32, 1 N. C. C. A. 51.

[81] Ohio Building Vault Co. v. Industrial Board, 277 Ill. 96, 14 N. C. C. A. 99.

[82] Weis Paper Co. v. Industrial Com., 293 Ill. 284.

[83] Dietzen v. Industrial Board, 279 Ill. 11, 15 N. C. C. A. 158; Mepham v. Industrial Commission, 289 Ill. 484.

something which he is employed to do, it will not be allowed for an injury received while he is doing voluntarily something unconnected with his employment.[84] But if the employer knows and acquiesces in the employee doing work which he was not hired to do, but is work which the employer is engaged in, the employee is held to be acting within the employment.[84a] A policeman in the employ of a city and injured by the accidental discharge of his revolver while he was acting as desk sergeant, is not entitled to compensation, as the duties of desk sergeant are not in any way connected with the hazards of any business carried on by the city.[85] A policeman and street commissioner going to get some lead from the depot got on a sleigh going in the direction of the depot, and caught his foot in the sleigh. It was held that he did not sustain his injury while engaged in a hazardous employment, or any risk incident to his employment, or peculiar to it.[86] A watchman who goes to sleep on the job and falls out of a window and down a chute, is not injured in the course of his employment, by risk incidental to it, for it is the duty of a watchman to watch and not to fall asleep.[87] Where a workman employed to drive a delivery wagon for a florist, was injured by a fall from a ladder while putting up a window box, it was held that the work he was then engaged in was not connected in any way with the hazards of his employment.[88] An employee injured by the accidental discharge of a shot gun while on his way to work, taken along by another workman in the hope of getting "a chance to hunt out there after we quit work" is not injured in the course of his employment, and the accident is not reasonably incidental to it.[89] An employer was engaged in the business of "leasing cer-

[84] Sunnyside Coal Co. v. Industrial Commission, 291 Ill. 523.

[84a] *Ibid.*

[85] Marshall v. City of Pekin, 276 Ill. 187, 14 N. C. C. A. 945, 1082.

[86] Spinks v. Village of Marcellus, 168 N. Y. Supp. 69, 16 N. C. C. A. 670.

[87] Gifford v. T. G. Patterson, Inc., 117 N. E. (N. Y.) 946, 15 N. C. C. A. 262.

[88] Glatzl v. Stumpp, 114 N. E. (N. Y.) 1053, 16 N. C. C. A. 645.

[89] Ward v. Industrial Accident Commission, 164 Pac. (Cal.) 1123, 15 N. C. C. A. 223.

tain road making machinery" and in the course of such business it was necessary to keep such machinery in repair. In addition to this machinery, the employer had in his possession a certain clamshell dredge, which he had acquired from a contractor who had been using it in harbor work. It was not in any sense roadmaking machinery. The employer was about to lease this dredge to another, and the employee was asked to make certain repairs on it, and while doing so was injured. It was held that the work being performed by the employee was not incidental to the employer's business of "leasing roadmaking machinery."[90] Splitting of wood, as an incident to the future loading of the wood upon a wagon and its delivery by the employer, as a carrier, is not an incident of the business of carriage, but rather an incident upon an incident, which is too remote to be covered by compensation.[91]

Further cases under this head will be considered under the following classification:

1. Act of God.
2. Street Risks.
3. Accidents during work intervals.
4. Personal Assaults.
5. Attacks by animals.

§ 50. Incidental to the employment. (1) *Act of God.* If an accident happen solely by reason of the operation of the forces of nature, or the action of the elements, to which the workman is exposed in the same manner, and to the same degree as other persons, it is held that such accident does not arise from a risk incidental to the employment. Many cases have arisen in which workmen have been injured by reason of the severity of the weather. In considering this sort of a case it was said by Fletcher Moulton, L. J., in the leading case of Warner v. Couchman, that it was necessary to "consider whether the accident arose out of the employment or was merely a consequence of the severity of the

[90] Stansbury v. Industrial Accident Commission, 171 Pac. (Cal.) 698, 16 N. C. C. A. 884.

[91] Casterline v. Gillen, 169 N. Y. Supp. 345, 16 N. C. C. A. 646.

weather to which persons in the locality, and whether so employed or not, were equally liable. If it was the latter, it does not arise 'out of the employment,' because the man is not specially effected by the severity of the weather by reason of his employment."[92]

The risk of injury from lightning, wind storms, frost and other natural causes, when shown to be entirely independent of the employment, may not properly be held incidental to it.[93]

§ 51. Usual exposure to natural hazards. In the following cases it has been held that the nature of the work did not cause or add to the risks which would be natural for such work, or expose the workman to extraordinary hazard: where a railroad section man was killed by a stroke of lightning while in a barn in which he had taken refuge from a storm, at the direction of his foreman;[94] where deceased was, during a heavy rainstorm, working at a water table in the road with a shovel, freeing outlets and gullets from matter that tended to choke them, and while so engaged was killed by lightning. It was held this employment created no special or peculiar risk from lightning, though deceased was obliged to do this while a thunder storm was raging; that he was exposed to no greater risk of being struck by lightning than if he had been working in a field or garden, and that "the antecedent probability that he would be struck by lightning seems to be no greater in this case than in the case of any other person who went to work that day within the area of the thunder storm."[95] To the same effect is a case in Wisconsin, where an employee was killed by lightning while working at the water's edge;[96] also a servant engaged

[92] Warner v. Couchman, (1911), 1 K. B. 351, 357, 5 B. W. C. C. 51, 1 N. C. C. A. 51.

[93] Andrews v. Failsworth Industr. Soc., Ltd., (1904), 2 K. B. 32; Central Illinois Public Service Company v. Industrial Commission, 291 Ill. 256; Karemaker v. The Corsican, 4 B. W. C. C. 295.

[94] Klawinski v. Railway Co., 185 Mich. 643.

[95] Kelly v. Kerry C. Council, (1908), 42 Ir. L. T. 23, 1 B. W. C. C. 194.

[96] Hoenig v. Industrial Commission, 159 Wis. 646, 8 N. C. C. A. 192. See also Wiggins v. Industrial Accident Board, 170 Pac. (Mont.) 9.

in a foundry yard, struck by lightning.[97] Again, a seaman while at work on his ship had his hands frozen from handling frozen ropes. It was held the injury did not arise out of the employment because the frost bites were caused by the natural action of the elements.[98] Where a baker in making his rounds delivering bread to his employer's customers on a cold day, was frost bitten, it was held that there was nothing in the nature of his employment which exposed him to more than the ordinary risk of cold to which any person working in the open was exposed on that day.[99] A plumber was overcome by heat while attending to his work in a trench in the open, during a hot July day, and it was held that he was subject only to such risk as was common to those in that neighborhood on that day.[100] A man leading a horse and wagon out of his employer's yard was struck by a piece of corrugated iron which had been blown from an adjoining roof by a violent wind, and it was held that his injuries were due to natural causes.[1] An employee working for an employer who was engaged along the country roads in building bridges. He camped or lodged at night in a tent, with other workmen, and during a storm was struck by lightning. The court in its opinion said: "The most that may be said where, as here, an employee is injured while sitting in his boarding tent preparatory to going to bed, is that if he had not been employed, he would not have been present in the tent, and would not have been struck at the time he was. In the same sense the fact that he was born establishes a causative connection. If he had never come into being he could not have been struck by lightning. The same argument might be made for a claim against one who sold a carriage to one who was struck by lightning while riding in it. What was said in Craske

97 Falconer v. Building Co., 3 Ct. of Session Cases (5th Series) 564.

98 Karemaker v. S. S. Corsican, 4 B. W. C. C. 295.

99 Warner v. Couchman, (1912), A. C. 35, 5 B. W. C. C. 177, 1 N. C. C. A. 51.

100 Robson, Eckford & Co. v. Blakeley, 5 B. W. C. C. 536.

1 Kinghorn v. Guthrie, 50 S. L. 863.

v. Wigan, 2 B. W. C. C. 35, covers the situation: 'It is not enough for the applicant to say "the accident would not have happened if I had not been engaged in this employment, or if I had not been in that particular place." The applicant must go further and must say "the accident arose because of something I was doing in the course of my employment, and because I was exposed by the nature of my employment to some peculiar danger." ' "[2] A workman died as the result of being overheated in the wash-house of the defendant's brewery, and it was held that the deceased was subjected to the same dangers from the excessive heat of the summer day as was every other person who had to work in the general locality of the brewery where he was employed.[3] Where an employee freezes his feet in the plant of a packing company, while working in the freezer, but there is no evidence of unusual exposure in his place of employment which would account for the freezing, compensation was denied;[4] also where the driver of a brewery wagon was overcome by the heat;[5] and where an employee out of idle curiosity goes to a place of danger where he is exposed to risks not incident to his employment, but to which all persons in the vicinity are exposed, he is not within the protection of the Act;[6] nor is a workman in charge of a threshing machine who was stung by a wasp.[7]

§ 52. Unusual exposure to natural hazards. In a leading Illinois case, the employee was chief engineer in an electric generating station and ice plant, in Charleston, Illinois. A destructive tornado swept over the city, and destroyed a portion of the building in which the employee was at work. He was found at a point just inside the engine room, five or six feet from the ice engine, in a standing posture, with bricks all around him, his body

[2] Griffith v. Cole Bros., 165 N. W. (Ia.) 577, 15 N. C. C. A. 674.

[3] Burke v. Balentine, 38 N. J. L. 105, 12 N. C. C. A. 322.

[4] Davis v. Fowler Packing Co., 168 Pac. (Kan.) 1111, 15 N. C. C. A. 685.

[5] Campbell v. Clausen-Flannigan Brewery, 171 N. Y. Supp. 522, 17 N. C. C. A. 1001.

[6] Connell v. Oscar Daniels Co., 168 N. W. (Mich.) 1009.

[7] Amys v. Barton, (1912), 1 K. B. 40, 5 B. W. C. C. 117.

covered so that a part of his head and left arm were all that were exposed. When found he was conscious but unable to speak. While they were releasing him from the debris of brick, mortar, etc., the ammonia fumes were so strong that the rescuing party could work but a moment or two at a time. He was bruised and his body was severely scalded by escaping steam, his face and body were severely burned, from which injuries so received, death resulted. In sustaining an award for compensation the Supreme Court of Illinois said: "It is generally held in this country that in order that an injury may be said to arise out of the employment the risk of being injured by the elements must be one incidental to the employment and not common to the public. Regardless of the nature or the fact of such employment or the risk being common to the general public, the employee must have been exposed to it in a greater degree than other persons, by reason of his employment. Risks to which all persons similarly situated are equally exposed and not traceable in some special degree to the particular employment, are excluded. * * * Deceased at the time the storm broke was engaged in assisting and directing the closing up of the plant of defendant in error. These duties took him among the steam pipes and ammonia coils, which subjected him to an unusual risk of being injured from escaping steam and ammonia fumes should the building be destroyed by storm. The evidence shows that the ammonia fumes and scalding steam contributed most largely to the injuries which caused his death. We are therefore of the opinion that there were in the circumstances of the employment of the deceased, risks of being injured by the storm not common to the public in that vicinity."[8]

This case is a typical example of that class of cases in which injuries have been held to have arisen from hazards incidental to the employment, and to which the

[8] Central Ill. Pub. Service Co., v. Industrial Commission, 291 Ill. 256.

employee was peculiarly exposed by reason of the circumstances surrounding the employment. It is only where the circumstances of the employment produce this added hazard, that the case falls within the exception, and may fairly be said to be incidental to the employment rather than independent of it. But if these circumstances subject the workman to some special risk, no matter how slight, it cannot be said that no greater danger is imposed upon him than upon the public generally.[9]

In the leading case of Griffith v. Cole Bros.,[10] where the employee was struck by lightning while occupying a boarding tent of the employer, who was engaged in bridge building, and compensation was denied because it was held the circumstances of the employment did not increase the hazard to which all persons in the neighborhood were exposed, the court discusses the governing principles in this class of cases: "Cases that hold a given accident from lightning did not arise out of the course of the employment recognize that such injury may be related to the employment. See Hoenig v. Commission, 159 Wis. 646, 8 N. C. C. A. 192. And so of Roger v. School Board, 1 Scots Law Times, 271, wherein it is said that:

" 'To be struck by lightning is a risk known to all and independent of employment, yet the circumstances of a particular employment might make the risk not a general risk, but a risk sufficiently exceptional to justify its being held that the accident from such risk was an accident arising out of the employment.'

"And it has been rightly held that injury from lightning did arise out of the employment where a telephone or telegraph operator was hurt by an electric shock received in the course of his work. Atlantic Ry. Co. v. Newton, 118 Va. 222, 12 N. C. C. A. 328. And so, where a workman on a high scaffolding was kept at work during a storm. Andrew v. Industrial Society (1904), 2

[9] Mueller v. Industrial Board, 283 Ill. 148, 16 N. C. C. A. 902.

[10] 165 N. W. (Ia.) 577, 15 N. C. C. A. 674.

K. B. 32. But where the servant is riding a corn cultivator and plowing corn, being struck by lightning is suffering from what is not peculiarly invited by the employment. A lineman, who while at his work is bitten by a snake will not be allowed to trace his injury to his employment even though he would not have been bitten, had he been elsewhere than where his employment called him. On the other hand, if he touch a live wire or is struck by lightning while repairing or putting up a wire, he may well claim that his injury is peculiarly due to his employment. As was said in Kelly v. County Council, 1 B. W. C. C. 194, there must be evidence that the servant was exposed to a greater risk of being struck by lightning than if he had been working in a field or garden. In Robson v. Blakely, 5 B. W. C. C. 36, it is well indicated what the natural range of enquiry is, and said:

" 'To what class of dangers does this man's employment expose him? * * * Suppose I say he is a collier. I may say that his employment exposes him to the risk of having things fall upon him from the roof, to the danger of tumbling down a shaft, and so on. In short there is a peculiar class of dangers which exist only for people who go down into mines.' * * *

"In one word it all turns upon whether it may in reason be said that as distinguished from being hurt while employed, the injury is due to the nature of the employment." [11]

Other cases holding that the injury was caused by a hazard peculiar to the employment are: An employee of a city, repairing a water main at a railroad intersection, held more exposed to danger than the public generally; [12] an insurance agent slipping on the ice; [13] heat, humidity and dust, of a poorly ventilated work room, causing injury; [14] a lumberman freezing his feet,

[11] Griffith v. Cole Bros., 165 N. W. (Ia.) 577, 15 N. C. C. A. 674.

[12] Brown v. Decatur, 188 Ill. App. 147.

[13] In re Harraden, 118 N. E. (Ind. App.) 142, 15 N. C. C. A. 230.

[14] Young v. Western Furniture Mfg. Co., 164 N. W. (Neb.) 712, 15 N. C. C. A. 676.

by reason of exposure to a temperature in the far north of 26 degrees below zero;[15] where a sailor on board a vessel, in the tropics, was especially exposed to sunstroke;[16] a workman in an iron works going from his furnace to a blacksmith shop along the banks of a canal, was found drowned;[17] where a workman in the tropics sustained sunstroke, while painting the side of a ship, exposed to the reflection of the heat from the side of the vessel and the water;[18] where an insurance collector going from door to door fell down stairs;[19] where a workman afflicted with epilepsy fell into the hold of a ship, while working near an open hatchway;[20] an employee falling down stairs, in a building where he is employed;[21] where a workman going across a street between two buildings used by his employer, slipped on the ice;[22] where a janitor of an apartment building, froze his toe while shoveling snow about the building.[23] In all these cases the distinction is properly drawn between those cases where there is the usual exposure to natural hazards, and those in which the hazard is peculiar to the employment, except two Minnesota cases and a case in Connecticut.[24] In a lightning case in Minnesota, the Supreme Court of that State held that if the accident was "natural" to the employment, it need not "in general be one peculiar to the particular em-

[15] Ellingson Lumber Co. v. Industrial Commission, 169 N. W. (Wis.) 568, 17 N. C. C. A. 1003.

[16] Davies v. Gillespie, 105 L. T. 494, 5 B. W. C. C. 64.

[17] Furnivall v. Johnson's Iron & Steel Co., Ltd., 5 B. W. C. C. 43.

[18] Morgan v. S. S. Zenaida, (1909), 25 T. L. R. 446, 2 B. W. C. C. 19.

[19] Refuge Assur. Co. v. Millar, (1912), S. C. 37, 5 B. W. C. C. 522.

[20] Wicks v. Dowell Co., (1905), 2 K. B. 225, 7 W. C. C. 14; *contra*, see Van Gorder v. Packard Motor Car Co., 162 N. W. (Mich.) 107, 14 N. C. C. A. 127; Broker v. Industrial Accident Com., 168 Pac. (Cal.) 126, 15 N. C. C. A. 215; Peterson v. Industrial Board, 281 Ill. 326, 15 N. C. C. A. 528.

[21] In re O'Brien, 117 N. E. (Mass.) 619.

[22] Redner v. H. C. Faber & Son, 167 N. Y. Supp. 242, 16 N. C. C. A. 903.

[23] State ex rel. Nelson v. District Court, 164 N. W. 917, 129 Minn. 502, 9 N. C. C. A. 129.

[24] State ex rel. Nelson v. District Court, 129 Minn. 502, 9 N. C. C. A. 129; Peoples Coal & Ice Co. v. District Court, 129 Minn. 502, 9 N. C. C. A. 129; Chiulla de Luca v. Board of Park Commissioners, 107 Atl. (Conn.) 611.

ployment." The facts in the case did not show any accentuation of the natural hazard of injury from lightning, and the decision is contrary to both principle and authority.[25] In a case of freezing which arose in the same State, it was held that a janitor who froze his toe while shoveling snow about the apartment building where he was employed, was entitled to compensation, although it appeared that he might at any time have gone into the apartment for the purpose of warming himself, and was not required to remain out in the cold so as unreasonably to expose himself to injury. This case is also difficult to reconcile with principles now well established by the decisions in other states.[26] In the Connecticut case referred to, a workman took refuge in a storm under a tree, and was there struck by lightning, and it was held that inasmuch as his work required him to be out doors, and the danger from lightning was greater than in a house, the accident was incidental to the employment.[27] The test applied by the court is not the proper one, under the authorities. It is not enough to say that the accident would not have happened if the workman had not been engaged in the employment at that place, but it must further appear that the accident arose because of something he was doing in the course of the employment, and because he was exposed by the nature of his employment to some peculiar danger.[28]

§ 53. Incidental to the employment. (2) *Street Risks.* We have already seen[29] that as a general rule accidents which happen to the workman while going to and returning from work, are not considered as incidental to the employment, unless by reason of the peculiar character of his duties, he is required to be on the street, while performing his work, or by reason of other cir-

[25] Peoples Coal & Ice Co. v. District Court, 129 Minn. 502, 9 N. C. C. A. 129.

[26] State ex rel. Nelson v. Dist. Court, 129 Minn. 502, 9 N. C. C. A. 129.

[27] Chiulla de Luca v. Board of Park Comrs., 107 Atl. (Conn.) 611.

[28] Griffith v. Cole Bros., 165 N. W. 577, 15 N. C. C. A. 674; Craske v. Wigan, 2 B. W. C. C. 35.

[29] *Ante* §§ 33, 34.

cumstances, his employment is held to continue during the time occupied in going or returning.[30]

§ 54. Street risks covered. In the following cases the employee has been held to be on the employer's business at the time of the accident, and that therefore the injury arose out of the employment and during the course of it: where an employee of a laundry was injured by an automobile while delivering a package of laundry;[31] a messenger boy, struck by a train, while on an errand for his employer;[32] where a salesman and collector while on the road collecting accounts for his employer was struck by an automobile;[33] murder of a collector who was killed for the purpose of securing money of the employer on the person of the employee;[34] where a collector falls on stairs;[35] where a workman was kicked by a passing horse;[36] where a bank messenger, carrying a bag, was attacked in the street by robbers;[37] where a workman, to the knowledge of the employer, and with his implied permission, rode a bicycle while on his employer's business, and was injured by collision with street car;[38] frost bite, contracted by an employee while traveling over a route laid out by his employer in the course of collecting insurance premiums and soliciting

[30] *Contra*, see Friebel v. Chicago City Ry. Co., 280 Ill. 76, 16 N. C. C. A. 390, 688, where the court makes the following statement: "It has been repeatedly held by this court and by courts of last resort in other jurisdictions in similar cases, that while one is injured while merely going to or returning from his employment the injury is considered to have occurred within the line of the employment." The cases cited by the court in support of this statement, however, all disclose special circumstances placing them in one or the other of the classes of exceptions referred to in Secs. 33 and 34 ante, to the general rule that accidents happening on the way to and from work are not covered.

[31] Hansen v. Northwestern Fuel Co., 174 N. W. (Minn.) 726.

[32] Chicago Packing Co. v. Industrial Board, 282 Ill. 497, 17 N. C. C. A. 261.

[33] In re Raynes, 118 N. E. (Ind. App.) 387, 16 N. C. C. A. 909.

[34] Spang v. Broadway Brewing & Malting Co., 169 N. Y. Supp. 574, 16 N. C. C. A. 637.

[35] Refuge Assur. Assn. v. Millar, 5 B. W. C. C. 522.

[36] McNeice v. Singer Sewing Machine Co., 4 B. W. C. C. 351.

[37] Nisbet v. Rayne & Burn, (1910), 2 K. B. 689, 3 B. W. C. C. 507.

[38] Pierce v. Provident Clothing & Supply Co., (1911), 1 K. B. 997, 4 B. W. C. C. 242.

insurance;[39] an insurance agent who slips on the ice;[40] a messenger boy killed in an elevator, used with the consent of the employer;[41] where a teamster in the employ of a department of the city, engaged in the relief of indigent persons, was struck by a street car while proceeding with his team to the home of a poor family for the purpose of moving their household goods;[42] and a solicitor and collector for a life insurance company, fatally injured by a street car, while running across the street to take a car, on the ground that his necessary use of street cars in his employment, exposed him to dangers not too remote in their causative relation to deprive him of the right to compensation.[43]

§ 55. Street risks not covered. The following street accidents have been held not to arise out of and in the course of the employment: where an employee, while waiting for his employer's horse to be watered stepped from the wagon he was on and started to cross the street to a drug store to get some tobacco, and was struck by an automobile;[44] where an employee returning from a visit in connection with his employer's business slips on the icy pavement;[44a] an employee passing along the street slips on an orange peel;[45] a workman cycling to work, ran into and upset by a dog;[46] where a messenger fainted in the street, from the effect of heat;[47] where strike-breaker was assaulted by striker on the way home from work;[48] where a sailor on leave of absence from the ship, falls on a public quay;[49] also, that the

[39] Larke v. John Hancock Mut. L. Ins. Co., 97 Atl. (Conn.) 320, 12 N. C. C. A. 308, 14 N. C. C. A. 495.

[40] In re Harraden, 118 N. E. (Ind. App.) 142, 15 N. C. C. A. 230.

[41] Smith v. Bartle Mfg. Corp., 178 N. Y. Supp. 589.

[42] City of Oakland v. Industrial Accident Commission, 170 Pac. (Cal.) 430, 16 N. C. C. A. 889.

[43] Moran's Case, 125 N. E. (Mass.) 591.

[44] In re Betts, 118 N. E. (Ind. App.) 551, 16 N. C. C. A. 904.

[44a] Hopkins v. Michigan Sugar Co., 184 Mich. 187.

[45] Chapman v. Pearn, 9 B. W. C. C. 224, 12 N. C. C. A. 368; see also Hadwin v. Shepherd, 9 B. W. C. C. 60, 15 N. C. C. A. 245.

[46] Greene v. Shaw, 46 Ir. L. T. 18, 5 B. W. C. C. 573.

[47] Rodger v. Paisley School Board, 5 B. W. C. C. 547.

[48] Poulton v. Kelsall, (1912), 2 K. B. 131, 5 B. W. C. C. 318.

[49] Kelly v. S. S. Foam Queen, (1910), 3 B. W. C. C. 113.

fact there is implied permission to the workman to leave the employer's premises for meals, that he cannot get them on the employer's premises, and that he must dine, in order to be fit for his work, do not justify a finding that absence for the purpose of getting dinner is in the course of the employment, or that an accident happening during such absence is one arising out of and in the course of the employment;[50] where workman was attacked by a cat in public street.[51]

§ 56. Incident to the employment. (3) *Accidents during work intervals.* Some of the cases properly classified under this head have already been noted in the discussion of the period of the employment.[52]

These cases usually arise under circumstances where the workmen leave the premises of the employer for the purpose of getting meals, or attending to other matters, more or less necessary or natural, under the circumstances surrounding the employment, or where work is temporarily suspended for reasonable or customary causes.

§ 57. Work intervals covered. Accidents during intervals in the employment have been held covered, in the following cases: where a workman was employed in subway construction, and got his clothing and body very dirty and filthy by reason of the character of his work, and before going to report to the engineer's office, a block away, it was necessary for him to clean up and wash, and being ordered into a shower bath he stepped onto a marble slab and in so doing slipped and fell;[53] where a barber shop porter, pursuant to custom and with the employer's consent left the shop during the forenoon to procure a bottle of milk to use with his lunch, and was injured while entering an elevator, although the elevator was controlled by the owner of the building, and was for the use of other persons as well;[54]

[50] Gilbert v. Owners S. S. Nizam, (1910), 2 K. B. 555, 26 T. L. R. 604, 3 B. W. C. C. 455.

[51] Rowland v. Wright, (1909), 1 K. B. 963, 1 B. W. C. C. 192.

[52] *Ante*, § 40 *et seq.*

[53] Sexton v. Public Service Commission, 167 N. Y. Supp. 493, 15 N. C. C. A. 228.

[54] Papineau v. Industrial Accident Commission, 187 Pac. (Cal.) 108.

where an employee was caught between the automatic gate and the floor of an elevator, where the employee was taught to and expected to use the elevator as occasion required, although the injury occurred during the lunch hour, while the employee was going to the part of the building where it was customary to eat lunch;[55] where an employee went into the boiler room, contrary to the rules, but with the knowledge and acquiescence of the employer, and placed a bottle of tea on the boiler to warm for her lunch, and in leaving the boiler room slipped and fell;[56] where a workman engaged in loading steel upon a railroad car while awaiting the arrival of trucks with more steel, went into a car and started to smoke, and because of the oily condition of his clothing, due to the nature of his employment, catches fire;[57] where a workman employed in a very high temperature, was injured by the bursting of a bottle of beer, as he was about to drink it, according to the custom among the workmen, the accident was held to have arisen out of and in the course of the employment;[58] if during work intervals, the employee remains on the premises of the employer, he is protected against the natural hazards to which he is there exposed, such as the falling of a structure upon him;[59] or the bite of an animal kept on the premises of the employer;[60] where workman was temporarily doing the work of another employer's workman;[61] where a sailor fell, while crossing a gangplank from his ship to another;[62] where a sailor fell,

[55] Humphry v. Industrial Commission, 285 Ill. 372, 17 N. C. C. A. 951.

[56] Etherton v. Johnstown Knitting Mills Co., 172 N. Y. Supp. 724, 17 N. C. C. A. 961.

[57] Dzikowska v. Superior Steel Co., 103 Atl. (Pa.) 351, 16 N. C. C. A. 914.

[58] Heywood v. Broadstone Milling Co., 128 L. T. Newsp. 134.

[59] Blovelt v. Sawyer, (1904), 1 K. B. 271, 6 W. C. C. 16; Haller v. City of Lansing, 162 N. W. (Mich.) 335, 14 N. C. C. A. 949; 15 *Id.* 280; Racine Rubber Co. v. Industrial Commission, 162 N. W. (Wis.) 664, 15 N. C. C. A. 280.

[60] Rowland v. Wright, (1909), 1 K. B. 963, 1 B. W. C. C. 192; see also Morris v. Council, (1905), 22 T. L. R. 22, 8 W. C. C. 1.

[61] Henneberry v. Doyle, 46 Ir. L. T. 70; 5 B. W. C. C. 580.

[62] Leach v. Oakley, Street & Co., (1911), 1 K. B. 523, 4 B. W. C. C 91.

while climbing a ladder leading from a quay to his ship;[63] and where the sailor had safely crossed the gang-plank, and fell while astride the ship's rail;[64] where a sailor fell climbing a ladder while returning to a trawler from the quay where it was moored;[65] an employee ordered to repair a water main at a point under an intersecting railroad track, who after reporting for work, but before starting work, walks from where the work is being carried on to a near-by hand car to put on rubber boots, and is injured, even though the manner of doing it was more dangerous than other possible ways of doing it.[66]

§ 58. Work intervals not covered. Accidents during intervals in the employment have been held not covered in the following cases: where an employee furnished his own team and drove a sprinkling wagon for the city, and after supper in the evening went out to his barn to attend to one of the horses which he kept in his own stable;[67] where an employee stepped onto a roller engine, during the noon hour, although he had sometimes driven the engine himself;[68] where an employee, during the noon hour, of a day when he had been hauling coal from a pile near a railroad, sat down to eat his lunch on the railroad track, leaning against a car, and was injured when the car was kicked by a locomotive;[69] where a sailor attempted to leave the ship for the purpose of going to lunch, and went by an unusual route, and undertook to go down a scaffolding and ladder on the outside of the ship, another and perfectly safe method of exit having been provided by the employer;[70] where an employee was run over while

[63] Moore v. Manchester Liners, (1910), A. C. 498, 3 B. W. C. C. 527.

[64] Canavan v. Owners S. S. Universal, 3 B. W. C. C. 357.

[65] Jackson v. General Steam Fishing Co., (1909), A. C. 523, 2 B. W. C. C. 56.

[66] Brown v. Decatur, 188 Ill. App. 147.

[67] State ex rel. Jacobson v. District Court, 175 N. W. (Minn.) 110.

[68] In re O'Toole, 118 N. E. (Mass.) 303, 16 N. C. C. A. 916.

[69] Haggard's Case, 125 N. E. (Mass.) 565.

[70] Moore & Scott Iron Wks. v. Industrial Accident Commission, 172 Pac. (Cal.) 1114, 16 N. C. C. A. 926.

resting on a switch track in the shade of a box car on the premises of the employer, where the track was known to be used by switch engines, and where the employee could have availed himself of other shade in which to rest;[71] where an employee returning from lunch, carrying personal hand baggage, trips on her skirt while ascending stairs leading to the employer's premises.[72]

§ 59. Incident to the employment. (4) *Personal Assaults.* An employer is not liable for the tortious act of a fellow workman, which has no relation whatever to the employment. If the proof in such a case is as consistent with the theory that the assault had its origin in a personal feud or ill-feeling between the men engaged in the altercation, as that it was connected with the business in which the workmen were engaged, it is held not to arise out of the employment;[73] but if it appears that the employee was assaulted by another employee, and that the altercation was not a personal matter, but grew out of a quarrel over the manner of conducting the employer's business, or a dispute connected with such business, it is held to arise out of the employment, and to be an incident of it, where the evidence shows the injured workman was not the aggressor.[74] In other words, the cases are governed by the general principle that the accident must have its origin in some risk of the employment.[75] The Illinois Supreme Court in discussing the subject of the hazard of men working together in a common employment has said: "Where men are working together at the same work, disagreements may be expected to arise about the work, the manner of doing it, as to the use of tools, interference with one

71 Weis Paper Mill Co. v. Industrial Com., 293 Ill. 284.

72 Hallett's Case, 119 N. E. (Mass.) 673, 16 N. C. C. A. 755.

73 Edelweiss Gardens v. Industrial Commission, 290 Ill. 459; Fitzgerald v. Clarke, (1908), 2 K. B. 796, 1 B. W. C. C. 197, 16 N. C. C. A. 926.

74 Pekin Cooperage Co. v. Industrial Commission, 285 Ill. 31, 17 N. C. C. A. 962; Swift & Co. v. Industrial Commission, 287 Ill. 564; Chicago, Rock Island & Pacific Railway Co. v. Industrial Commission, 288 Ill. 126.

75 Edelweiss Gardens v. Industrial Commission, 290 Ill. 459.

another, and many other details which may be trifling or important. Infirmity of temper or worse may be expected, and occasional blows and fighting. Where the disagreement arises out of the employer's work in which two men are engaged, and as a result of it one injures the other, it may be inferred that the injury arose out of the employment."[76] The following American cases illustrate the application of this rule, and hold that the injuries were incidental to the employment: where a miner is shot in the back by a mine guard, while returning to look after his work, even though the act of the guard were tortious, as it was within the general scope of the guard's duty;[77] where an employee is shot during a quarrel, because he reported the absence from work of the employee who shot him;[78] where an employee pushing a wheelbarrow, ran against the foreman, who kicked over the wheelbarrow and called the employee names, and then assaulted him;[79] where a disagreement arises out of work in which two men are engaged, and as a result one assaults the other;[80] where an employee, following the orders of his superior, attempts to secure possession of certain tools, and is assaulted by another employee, it not appearing that he provoked the assault;[81] where the assailant is drunk, and his habits of drunkenness are known to the employer;[82] where a boss is assaulted by an employee whom he has discharged;[83] a quarrel between a watchman and the superintendent of the plant, resulting in homicide, even though some personal matters contributed to the con-

[76] Pekin Cooperage Co. v. Industrial Commission, 285 Ill. 31, 17 N. C. C. A. 962.

[77] Atolia Mining Co. v. Industrial Accident Commission, 167 Pac. (Cal.) 148, 15 N. C. C. A. 238.

[78] C. R. I. & P. Ry. Co. v. Industrial Commission, 288 Ill. 126.

[79] American Steel Foundries v. Melinik, 126 N. E. (Ind. App.) 33.

[80] Mueller v. Klingman, 125 N. E. (Ind. App.) 464; Jacquemin v. Turner & Seymour Mfg. Co., 103 Atl. (Conn.) 115, 16 N. C. C. A. 930.

[81] Industrial Commission v. Pora, 125 N. E. (O.) 662.

[82] In re Employers Lia. Assur. Corp., 102 N. E. (Mass.) 697, 4 N. C. C. A. 554; In re McNichol, 215 Mass. 497, 4 N. C. C. A. 522. See also Carbone v. Loft and State Ind. Com., 219 N. Y. Memo. 37.

[83] San Barnardino Co. v. Industrial Accident Commission, 169 Pac. (Cal.) 255, 15 N. C. C. A. 291.

troversy;[84] where an employee was instructed by the employer to pursue two persons carrying off a barrel, and bring back the barrel, and in attempting to do so was assaulted.[85] An employee's duty was to check up upon deliveries of ice made by the employer's teamsters, and call their attention to any shortages, and require them to make up such shortages. Upon making such a demand upon one of the teamsters, he became angry and shot the employee, and it was held the felonious character of the act would not deprive the claimants of compensation.[86] A head waiter discharged a waiter in a hotel, and inflamed with liquor, he sought out the head waiter and shot and killed him. The shot occurred while deceased was eating his lunch, which was furnished as a part of his contract of employment, and although the deceased was free to leave the hotel in the afternoon, he was subject to call while in the hotel, and customarily returned to his place of employment in the dining room after eating his lunch. The assault was held incidental to the employment.[87] Where an employee whose duty it was to report leaks in steam pipes in a large packing plant, is injured in a fight with the foreman of the department, whither the employee had been summoned by the blowing of a whistle in accordance with the custom when a leak was discovered, where the evidence warrants the conclusion that the altercation was not personal but grew out of matters connected with the employee's work compensation was awarded.[88]

Where the assault is made by some person other than a fellow employee, it is incident to the employment only when it is induced by the nature of the employee's work

[84] American Smelting & Refining Co. v. Cassil, 175 N. W. (Neb.) 1021.

[85] Nevich v. D. L. & W. R. R. Co., 100 Ath (N. J.) 234, 11 N. C. C. A. 240, 14 N. C. C. A. 129, 232, 291.

[86] Polar Ice & Fuel Co. v. Mulray, 119 N. E. (Ind. App.) 149, 16 N. C. C. A. 933.

[87] Hayden v. Keown, 122 N. E. 264.

[88] Swift & Co. v. Industrial Commission, 287 Ill. 564; *contra*, Griffin v. A. Roberson & Son, 162 N. Y. Supp. 313, 14 N. C. C. A. 229; Union Sanitary Mfg. Co. v. Davis, 115 N. E. (Ind. App.) 676, 14 N. C. C. A. 91, 94, 227, 428.

in which he is at the time engaged or may reasonably have been anticipated as a risk due to the peculiar character of such work.[89] This rule is given frequent application in cases of assaults upon night watchmen, whose duties expose them to the danger of attack in guarding their employer's premises.[90] The Illinois Supreme Court in considering such a case said: "We are not intending to hold that any assault on an employee while in the discharge of his duties arises out of his employment. Such an assault only arises out of his employment in a case where the duties of the employee are such as are likely to cause him to have to deal with persons who in the nature of things are liable to attack him."[91] And in another similar case: "The duties of the applicant required him, among other things at least, to guard the property of the company against fires and trespassers. Such an employment is not without its hazards and dangers. It must be assumed that the duties of the applicant were necessary to the protection of the company's property or he would not have been employed for that purpose, and in such employment he would run the risk of being subject to assault and injury in protecting the property of the company,—and that was in fact what happened in this case."[92]

On the same principle it is held that an employee who is injured by strikers who enter the employer's place of business and create a riot, and assault the employee while he is endeavoring to protect the employer's property, is injured by accident arising out of the employment;[93] also where a collector is murdered for the purpose of securing money of the employer in the posses-

[89] Ohio Bldg. Vault Co. v. Industrial Board, 277 Ill. 96, 14 N. C. C. A. 99, 425, 430.

[90] Hellman v. Manning Sandpaper Co., 162 N. Y. Supp. 335, 14 N. C. C. A. 237; Chicago Dry Kiln Co. v. Industrial Board, 276 Ill. 556, 14 N. C. C. A. 139, 240; Ohio Bldg. Vault Co. v. Industrial Board, 277 Ill. 96, 14 N. C. C. A. 99, 425, 430.

[91] Ohio Bldg. Vault Co. v. Industrial Board, 277 Ill. 96, 14 N. C. C. A. 99, 425, 430.

[92] Chicago Dry Kiln Co. v. Industrial Board, 276 Ill. 556, 14 N. C. C. A. 139, 240.

[93] Baum v. Industrial Commission, 288 Ill. 516; Dietz v. Solomonwitz, 166 N. Y. Supp. 849, 16 N. C. C. A. 413.

sion of the employee;[94] also where a game warden is shot by a lessee of the premises, while hunting deer.[95] But it has been held that criminal assault upon a school teacher on her way home from school, has no causal connection with the employment.[96] In another case, two boys employed in an ice house were skylarking, and after a number of scuffles were warned by the foreman, who was an officer of the company, to stop. A short time afterwards one of the boys struck the other a blow on the head with an ice pick, fracturing his skull and rendering him unconscious. It was held that the employer was charged with contemplating nothing more on the head with an ice pick, fracturing his skull and not that one of the boys might thereafter commit an atrocious assault upon the other, and that therefore the particular assault was not incident to the employment.[97]

In some jurisdictions the compensation law expressly excludes injuries "intentionally inflicted," in which case, of course, it would be necessary for the claimant to prove that such injury was not intentionally inflicted.[98]

§ 60. Incident to the employment. (4) *Personal assaults—foreign cases.* The foreign cases are in general accord with the American decisions referred to in the preceding section. For example: A boy was injured by another boy throwing a piece of metal at a third boy, which missed his aim, and struck claimant while he was working. The court in its decision said that the language of the statute "out of the employment" would seem "to point to accidents arising from such causes as the negligence of fellow workmen in the course of the employment or some natural cause, incidental to the character of the business. * * * But I do not think that an accident *caused by the tortious act* of a

[94] Spang v. Broadway Brewing & Malting Co., 169 N. Y. Supp. 574, 16 N. C. C. A. 637, 17 N. C. C. A. 787.

[95] Shafter Est. v. Industrial Accident Commission, 166 Pac. (Cal.) 24.

[96] State ex rel. Com. School Dist. No. 1 v. District Court, 168 N. W. (Minn.) 555, 17 N. C. C. A. 937.

[97] Mountain Ice Co. v. McNeil, 103 Atl. (N. J.) 184, 16 N. C. C. A. 932.

[98] Helberg v. Town of Louisville, 180 Pac. (Col.) 751.

fellow workman having no relation whatever to the employment, can be said to arise out of the employment."[99]

The doctrine here announced has been followed in subsequent cases. For example, an engineer was injured by a stone dropped from a bridge by a mischievous boy. The court held that the accident arose out of and in the course of the employment, drawing the distinction that moving trains were especially attractive to children, who frequently indulged in throwing or dropping stones at and upon moving trains, and it was therefore one of the risks incident to the employment.[1]

An employee was stabbed and killed by ruffians when he went to the assistance of his employer who was being assaulted while protesting against the destruction of pipes by the ruffians. The court said: "Applying the reasoning of that case (Challis v. R. R. Co. (1905) 2 K. B. 154), to the one before us, could it be possibly said that it was an incident of the employment undertaken by the deceased man that there should be this fight in the street where the pipes were being laid, and that a drunken man should draw a knife and stab him? The mere statement of the proposition involves the answer that such a risk could not be incidental to the deceased man's employment." And again: "I cannot understand how an occurrence could arise out of and in the course of a particular employment, unless it was something, the risk of which might have been contemplated by a reasonable person when entering the employment as incidental to it. It could not reasonably have been contemplated by either the employer or the employed in this case, that amongst the risks incidental to the employment was that of the workman's being stabbed, as he was, in a drunken quarrel."[2]

Where a patron of a hotel went into the kitchen, without authority, and made a rush at the cook, who was

[99] Armitage v. L. & Y. R. Co., (1902), 2 K. B. 178, 183, 4 W. C. C. 5.

[1] Challis v. L. S. W. Railroad Co., (1905), 2 K. B. 154, 7 W. C. C. 23.

[2] Collins v. Collins, (1907), 41 Ir. L. T. R. 3, 2 I. R. 104.

injured in trying to avoid the assault, it was held that the cook was not injured in the course of the employment, or that it was incidental thereto.[3]

Again, a fellow workman in "horse play" hooked the crane chain into the handkerchief of the workman, and started the crane in motion. The workman was hauled up to the top of the warehouse, where the handkerchief gave way and he fell to the floor and was injured. Following the doctrine announced in the earlier cases, the court held "that the employer is not liable for the tortious act of a fellow workman, which had no relation whatever to the employment."[4]

Also, it has been held that where a workman trying to avoid the deliberate assault of a fellow workman fell over a rope, and throwing up his hand in falling, accidentally injured the workman making the assault, with a hammer carried in the hand, the accident did not arise out of the employment.[5]

In a later decision, however, in the Court of Appeal in England, it was held that the murder of a mining company's cashier, in a railroad train, while traveling on one of his regular trips with money of the company for wages, was an accident arising out of and in the course of the employment.[6]

Again, it has been held that one of the risks incidental to a gamekeeper's occupation was to be subject to personal assaults of poachers, and that an injury sustained thereby, was an injury by accident arising out of and incidental to the employment, earlier cases being distinguished.[7]

§ 61. Incident to the employment. (5) *Attacks by animals.* If an employee is injured by the attack of an animal, the care or custody or control of which is a part of his duty, he is held to be injured in the course of his

[3] Murphy v. Berwick, 43 Ir. L. T. 126, 2 B. W. C. C. 103.

[4] Fitzgerald v. Clarke, (1908), 2 K. B. 796, 1 B. W. C. C. 197.

[5] Shaw v. Wigan Coal & Iron Co., (1909), 3 B. W. C. C. 81.

[6] Nisbet v. Rayne & Burn, (1910), 2 K. B. 689, 3 B. W. C. C. 507.

[7] Anderson v. Balfour, (1910), 2 I. R. 497, 3 B. W. C. C. 588.

employment. Such attacks are also considered as incidental to the employment, if the animal is customarily kept upon the employer's premises, so that the employee in the discharge of his duties on such premises, is exposed to such attacks. For example, a workman employed in a stable, bitten by a cat which was kept in the stable, and a workman injured by a lion, of which he had charge, and which he was trying to get back into a cage, from which it had escaped, were held to have been injured in the course of the employment.[8]

The Court of Appeal of England held that a workman in charge of a threshing machine in a field who was stung by a wasp, was not especially exposed to such a hazard, and that it was therefore not incidental to it, and that it did not arise out of the employment, reversing the County Court.[9]

It was also held in Ireland that an accident to a shepherd going to his work on his bicycle, who was run into by his own dog, causing injury, happened in the course of but did not arise out of the employment.[10]

A maid, in the course of her duties, was sitting at an open window sewing. An insect flew into her face, and in throwing up her hand to protect herself from it injured her eye. It was held that the accident did not arise out of the employment.[11]

A salesman and collector while riding in a street upon a bicycle, in the course of his employment, was kicked on the knee by a passing horse, and injured. It was held that the accident arose out of the employment.[12]

A groom was thrown from a horse which he was exercising, and which there was some evidence he had been told to lead and not to ride. The horse threw him, and he lost the sight of one eye, and sustained other injuries.

[8] Rowland v. Wright, (1909), 1 K. B. 963, 1 B. W. C. C. 192; Hapleman v. Poole, (1908), 25 T. L. R. 155, 2 B. W. C. C. 48.

[9] Amys v. Barton, (1912), 1 K. B. 40, 5 B. W. C. C. 117.

[10] Greene v. Shaw, 46 Ir. L. T. 18, 5 B. W. C. C. 573.

[11] Craske v. Wigan, (1909), 2 K. B. 635, 2 B. W. C. C. 35.

[12] M'Neice v. Singer Sewing Machine Co., Ltd., (1911), S. C. 12, 48 Sc. L. R. 15, 4 B. W. C. C. 351.

The County Court's decision that the accident arose out of the employment was upheld by the Court of Appeal.[13]

§ 62. Reasonable and necessary acts. Many cases turn upon the question of whether the act of the workman which caused the injury was reasonable or necessary, in view of all the circumstances surrounding his employment. If the act is entirely reasonable and necessary, the risk incurred is to be regarded as arising out of the employment. For example: A sailor washing his clothes in a dark alleyway, fell down a half-open hatchway and was injured. The Court found that it was necessary to wash his clothes, and that he was doing it in a reasonable place and manner;[14] also where a sailor finding no other means of getting aboard, jumped from the pier to the vessel;[15] where an engineer on board ship was cautioned against having a fire in his cabin at night because of danger of asphyxiation, did light one on a cold night, and was suffocated;[16] where a sailor attempted to board ship by using a skid instead of the hatchway, which was customary among the workmen;[17] also where an employee went upon a roof and attempted to pull down a rope used in hoisting a load to a wagon, although he did not do the work perhaps in the best way;[18] and where a school teacher moved a heavy piece of furniture which was out of its usual place in the school room, although there was a janitor in the building whose business it was to do all janitor work;[19] and where a workman responding to a call of nature stood beside a freight car which was thrown against him;[20] and where an elevator conductor

[13] Wright v. Scott, 5 B. W. C. C. 431.

[14] Cokolon v. Owners Ship Kentra, 5 B. W. C. C. 658.

[15] Kearon v. Kearon, (1911), 45 Ir. L. T. 96, 4 B. W. C. C. 435.

[16] Edmunds v. S. S. Peterson, 28 T. L. R. 18, 5 B. W. C. C. 157.

[17] Robertson v. Allan Bros. & Co., (1908), 98 L. T. 821, 1 B. W. C. C. 172.

[18] Ross v. Gennessee Reduction Co., 168 N. Y. Supp. 51, 15 N. C. C. A. 230.

[19] Elk Grove Union H. S. District v. Industrial Accident Commission, 168 Pac. (Cal.) 392, 15 N. C. C. A. 148, 231.

[20] State ex rel. Great Northern Express Co. v. District Court, 172 N. W. (Minn.) 310.

negligently put his head out of the door of the elevator and was caught and injured.[21]

§ 63. Unreasonable or unnecessary acts. Where a workman being paid the wages of a fellow workman by mistake, undertook to give them to him by jumping onto an engine going about five miles an hour, and was hurt, his act was held unreasonable and unnecessary;[22] also where a miner was discharged and told to wait at the bottom of the pit until he could be taken up, but waited elsewhere, and was injured;[23] where a man, instead of using the gangplank, tried to jump onto a ship, which was strictly forbidden;[24] where a workman on his way home from work, attempted to jump on employer's moving train, on the premises, in violation of the rules;[25] where a workman took a short cut, instead of going the usual course, and while walking along a railroad track was run over;[26] where a workman, working at a machine, played with a cog wheel, contrary to orders;[27] where a workman going from one farm to another, attempted to get into a cart belonging to the employer and while so doing was injured;[28] where a man voluntarily submitted himself to an X-ray operation for experimental purposes;[29] where a workman returning to his ship, tried to get there by paddling a large rowboat with a rudder, and was carried out to sea and drowned;[30] where one sent to deliver goods on the

[21] Erickson v. American Wheel Wks., 196 Ill. App. 346, 15 N. C. C. A. 1026; see also Morris & Co. v. Cushing, 172 N. W. (Neb.) 691; Kent v. Boyne City Chemical Co., 162 N. W. (Mich.) 268, 15 N. C. C. A. 165.

[22] Williams v. Wagan Coal & Iron Co., (1909), 3 B. W. C. C. 65.

[23] Smith v. Normanton Colliery Co., (1903), 1 K. B. 204, 5 W. C. C. 14.

[24] Martin v. Fullerton & Co., (1908), S. C. 1030, 45 S. L. R. 812, 1 B. W. C. C. 168.

[25] Pope v. Hills Plymouth Co., (1910), 102 L. T. 632, 3 B. W. C. C. 341; see also Kane v. Merry & Cunninghame, (1911), S. C. 533, 4 B. W. C. C. 379; Morrison v. Clyde Nav. Trustees, (1908), 46 S. L. R. 38, 2 B. W. C. C. 99.

[26] McLaren v. Caledonian R. Co., (1911), S. C. 1075, 48 S. L. R. 885.

[27] Furniss v. Gartside & Co., Ltd., (1910), 3 B. W. C. C. 411.

[28] Parker v. Pont, 105 L. T. 493, 5 B. W. C. C. 45.

[29] Curtis v. Talbot, (1911), 131 L. T. Newsp. 552.

[30] Halvorsen v. Salvesen, (1912), S. C. 99, 5 B. W. C. C. 519.

third floor of an infirmary, used the freight elevator which he knew was against the rules, instead of going up the usual way;[31] where a traveling auditor for a railway company, who had left the train at a station to watch the train employees caring for an injured person, and is himself injured in trying to board a moving train;[32] where a watchman used a circular saw to make a board of suitable length to barricade a door and was injured by the saw, it was held that his resort to the use of a circular saw was entirely beyond the scope of his employment, not within the contemplation of his employer, and was not a reasonable means to the end sought;[33] and where a teamster hauling coal for the city, from a pile near the railroad tracks during the lunch hour sat down on the track, with his back against a car, while his horses were being fed at the coal pile near by, and the car was kicked back, throwing him under the car;[34] and where an employee received an electric shock from using an electric lamp to look into a tank merely to satisfy his curiosity.[35]

§ 64. "Caused to"—"sustained by,"—construed. The language of the English Act is "If in any employment * * * personal injury * * * is *caused to.*" The language of the Illinois Act is "accidental injuries *sustained by*" any employee, etc.

It would seem that the words "sustained by" might reasonably be given a wider meaning than the words "caused to," inasmuch as the latter words imply some active or positive force or agency, causing the injury, whereas the former would clearly cover any accidental injury, *received or suffered,* regardless of any affirmative or positive act, causing the injury, provided, of course, it arose out of and in the course of the employ-

[31] McDead v. Steele, 4 B. W. C. C. 412.

[32] Northwestern Pacific Ry. Co. v. Industrial Accident Commission, 163 Pac. (Cal.) 1000, 14 N. C. C. A. 99, 15 N. C. C. A. 220.

[33] Brusster v. Industrial Accident Commission, 169 Pac. (Cal.) 258, 15 N. C. C. A. 278.

[34] Haggard's Case, 125 N. E. (Mass.) 565.

[35] Maronofsky's Case, 125 N. E. (Mass.) 565.

ment. "Sustain" means to suffer, to bear or to undergo.[36]

The "cause" of the injury, within the meaning of the English Act, is the immediate cause, and not some remote cause, which might be discovered in the chain of circumstances which led up to the injury.[37]

A workman was seized with an epileptic fit during the course of his employment, and fell through the hold of a ship. It was held that the fall was the immediate cause of the injury, and not the fit, and that therefore he was entitled to compensation. In announcing the principle applicable to such cases, the court said that it "ought not to go back along the train of circumstances and trace the accident to some remote source when it is plain that the man was in fact injured by falling from the place where he was standing, and where it was his duty to stand, in discharge of his duty to his employer."[38]

On the other hand it was said in an Illinois case that "a fall resulting from a dazed mental condition arises out of the condition and not out of the employment."[39]

§ 65. Proximate cause. A similar definition is given of "proximate cause" by the Illinois courts: "The nearest independent cause which is adequate to produce and does bring about an accident, is the proximate cause of the same, and supersedes any remote causes;"[40] and "the proximate cause of an injury is that act or omission which immediately causes, and without which the injury would not have happened, notwithstanding other conditions or omissions concurred therewith."[41]

The possibility of doubt in the construction of such a provision has led the legislature of Wisconsin to amend the compensation law of that state so that it shall

[36] 37 Cyc. 653.

[37] Wicks v. Dowell & Co., (1905), 2 K. B. 225, 7 W. C. C. 14; *contra*, see Butler v. Burton-On-Trent Union, 5 B. W. C. C. 355; and Nash v. The Rangatira, (1914), 3 K. B. 978.

[38] *Ibid.*

[39] Peterson v. Industrial Board, 281 Ill. 326, 15 N. C. C. A. 528.

[40] Yeates v. I. C. R. R. Co., 241 Ill. 205, 211.

[41] Miller v. Kelly Coal Co., 145 Ill. App. 452, 10 Ill. Notes, p. 1191, § 237.

only apply "where the injury is proximately caused by accident."[42]

The common law rule of proximate cause would seem to apply to compensation cases, with perhaps a more liberal construction of the circumstances surrounding the accident so as to include any contributing cause, whether exclusive or not, and the immediate rather than a remote cause.[43] For example it has been said that if a fit and the conditions of the employment are each contributing causes of a fall of a workman, he is within the Act, but not where the fit alone causes the accident.[44] Where an employee was discovered unconscious lying near a stopcock from which illuminating gas was escaping, and shortly thereafter died, and there were circumstances tending to show that he was in the discharge of his duties at the time, the escaping gas was held the proximate cause of his death.[45] Where a workman who was in a healthy condition prior to the accident, developed diabetes, immediately thereafter, it was held he was entitled to compensation upon medical testimony that the shock of the accident might have caused the diabetic condition.[46] But the same court held that a fall, in the usual course of the employee's work which was not in itself sufficient to cause death, where there was evidence that the employee during the previous summer was confined to his bed with heart trouble, was not sufficient to show that the accident was the proximate cause of the death.[47] Where an employee was crushed under a load of lumber, and suffered several broken ribs and other injuries, and was thereafter confined to his bed until his death, and an autopsy disclosed that he had pulmonary tuberculosis in such an advanced stage that one lung had been entirely destroyed and the other to a considerable extent, but it

[42] Laws Wis. 1913, Ch. 599.

[43] Miller v. Kelly Coal Co., 145 Ill. App. 452; Wicks v. Dowell & Co., 7 W. C. C. 14.

[44] Brooker v. Industrial Accident Commission, 168 Pac. (Cal.) 126, 15 N. C. C. A. 215.

[45] Holnagel v. Lansing Fuel & Gas Co., 166 N. W. (Mich.) 843, 17 N. C. C. A. 787.

[46] Balzer v. Saginaw Beef Co., 165 N. W. (Mich.) 785.

[47] Johnson v. Mary Charlottee Mining Co., 165 N. W. (Mich.) 650, 15 N. C. C. A. 647.

also appeared that he had worked steadily at hard labor up until the time of his injury and was apparently in good health, it was held that the trial court was justified in finding that the accident caused his death.[48] On the other hand, it has been held that to establish the fact that death resulted from an injury it is clearly not sufficient to prove that the workman sustained an injury, that an operation was performed on account thereof, and after he had apparently recovered from the effects of the operation and the anaesthesia he died from a disease which existed before the injury.[49] Whether a second accident happening to an employee who has partially recovered from the effects of a first injury is an independent intervening cause is a question of fact, and if there is any evidence to sustain the finding of the Commission that the employee had not entirely recovered from the effects of the first injury, and that the second accident is therefore not an intervening cause, an award for compensation will be sustained.[50]

[48] State ex rel. Jefferson v. District Court of Ramsey County, 164 N. W. (Minn.) 1012, 15 N. C. C. A. 645.

[49] Tucillo v. Ward Baking Co., 167 N. Y. Supp. 666, 15 N. C. C. A. 637.

[50] Bailey v. Industrial Commission, 286 Ill. 623; Cramer v. West Bay City Sugar Co., 167 N. W. (Mich.) 843; Shell v. Industrial Accident Commission, 172 Pac. (Cal.) 611, 16 N. C. C. A. 552, 17 N. C. C. A. 256-7; Head Drilling Co. v. Industrial Accident Commission, 170 Pac. (Cal.) 157, 16 N. C. C. A. 550. See also State ex rel. Dickinson Co. v. District Court of Hennepin County, 165 N. W. (Minn.) 478, and §§ 143 *et seq.*, *post*.

CHAPTER III

HAZARDOUS CLASSIFICATION OF INJURIES

Sec. 3 of the Illinois Act

§ 3. The provisions of this Act hereinafter following shall apply automatically, and without election to the State, county, city, town, township, incorporated village or school district, body politic or municipal corporation, and to all employers and their employees, engaged in any of

Sec. 3 of the Illinois Act

the following enterprises or businesses which are declared to be extra hazardous, namely:

1. The erection, maintaining, removing, remodeling, altering or demolishing of any structure, except as provided in sub-paragraph 8 of this section.

2. Construction, excavating or electrical work, except as provided in sub-paragraph 8 of this section.

3. Carriage by land or water and loading or unloading in connection therewith, including the distribution of any commodity by horse-drawn or motor driven vehicle where the employer employs more than three employees in the enterprise or business, except as provided in sub-paragraph 8 of this section.

4. The operation of any warehouse or general or terminal store houses.

5. Mining, surface mining or quarrying.

6. Any enterprise in which explosive materials are manufactured, handled or used in dangerous quantities.

7. In any enterprise wherein molten metal, or explosive or injurious gases or vapors, or inflammable vapors or fluids, or corrosive acids, are manufactured, used, generated, stored or conveyed in dangerous quantities.

8. In any enterprise in which statutory or municipal ordinance regulations are now or shall hereafter be imposed for the regulating, guarding, use or the placing of machinery or appliances or for the protection and safeguarding of the employees or the public therein; each of which occupations, enterprises or businesses are hereby declared to be extra hazardous; *Provided,* nothing contained herein shall be construed to apply to any work, employment or operations done, had or conducted by farmers and others engaged in farming, tillage of the soil, or stock raising, or to those who rent, demise or lease land for any such pur-

Sec. 3 of the Illinois Act

poses, or to any one in their employ or to any work done on a farm, or country place, no matter what kind of work or service is being done or rendered. [Amended by Act approved June 28, 1919.

§ 66. Compulsory provisions. Section 3 of the Illinois Act makes it compulsory as to all "employers and their employees engaged in" the extra hazardous industries enumerated in the section. Compulsory workmen's compensation and industrial insurance laws have been enacted in a number of American states, some of which are based upon a classification of hazardous trades, the number of employees, etc.[1]

The constitutionality of these laws has been questioned in many cases, but almost without exception the laws have been sustained.[2]

The Supreme Court of Illinois in discussing the constitutional questions raised with reference to the compulsory features of the Illinois law said:

"Section 3 of the Workmen's Compensation Act provides that the Act shall apply automatically and without election to all employers and their employees engaged in

[1] *Arizona:* Chap. 7, Rev. Stat. 1913; *California:* Chap. 586, Laws 1917; *Idaho:* Chap. 81, Laws 1917; *Maryland:* Chap. 800, Laws 1914; *New York:* Chap. 67, Consolidated Laws, entitled "Workmen's Compensation"; *North Dakota:* Chap. 162, Laws 1919; *Ohio:* Page & Adams Anno. O. Gen. Code 1912 and 1916 Supp., §§ 1465-37 to 1465-108, and §§ 871-1 to 871-12; *Oklahoma:* Chap. 246, Laws 1915, and Chap. 14, Laws 1919; *Utah:* Chap. 100, Laws 1917, and Chap. 63, Laws 1919; *Washington:* Remington & Ballinger, Anno. Codes & Stat. Wash., §§ 6604-1 to 6604-120; *Wyoming:* Chap. 124, Laws 1915, amd. Chap. 69, Laws 1917, and Chap. 117, Laws 1919.

[2] Mountain Timber Co. v. State of Washington, 243 U. S. 219, affirming 75 Wash. 581, 13 N. C. C. A. 927; Northern Pacific Ry. Co. v. Meese, 239 U. S. 614, 10 N. C. C. A. 939; N. Y. Central R. R. Co. v. White, 243 U. S. 188, 13 N. C. C. A. 943; Grand Trunk Western Railway Co. v. Industrial Commission, 291 Ill. 167; Arizona Eastern R. Co. v. Matthews, 180 Pac. (Ariz.) 159; Northern Pacific S. S. Co. v. Industrial Accident Commission, 163 Pac. (Cal.) 199, 910, 17 N. C. C. A. 1065; Solvuca v. Ryan & Reilly Co., 101 Atl. (Md.) 710, 17 N. C. C. A. 477; Thornton v. Duffy, 124 N. E. (O.) 54; Adams v. Iten Biscuit Co., 162 Pac. (Okla.) 938; Garfield Smelting Co. v. Industrial Commission, 178 Pac. (Utah) 57; State ex rel. Davis Smith Co. v. Clausen, 65 Wash. 156, 3 N. C. C. A. 599.

any of the enterprises or businesses which are declared by the Act to be extra-hazardous, and in this class are placed carriers by land. It is contended that the Act is unconstitutional because it creates a liability without fault of the employer, takes the property of employers brought automatically within its provisions without due process of law, denies to employers the right of trial by jury, delegates judicial powers to persons not authorized by the constitution to perform judicial acts, and restricts the free right of contract guaranteed by the constitution. The scheme of the Act is so wide a departure from common law standards respecting responsibility of employer to employee that doubts naturally arise respecting its constitutional validity. In support of this type of legislation it is said in New York Central Railroad Co. v. White, 243 U. S. 188, (37 Sup. Ct. 247) that the whole common law doctrine of employer's liability for negligence, with its defenses of contributory negligence, fellow servants' negligence and assumption of risk, is based upon fiction, and is inapplicable to modern conditions of employment; that in the highly organized and hazardous industries of the present day, the causes of accident are often so obscure and complex, that in a material proportion of cases it is impossible by any method correctly to ascertain the facts necessary to form an accurate judgment, and in a still larger proportion, the expense and delay required for such ascertainment amount, in effect, to a defeat of justice; that under the former system the injured workman was left to bear the greater part of industrial accident loss, which because of his limited income he was unable to sustain, so that he and those dependent upon him were overcome by poverty and frequently became a burden upon public or private charity; and that litigation was unduly costly and tedious, encouraging corrupt practices and arousing antagonisms between employers and employees.

The entire matter of liability for death caused by wrongful act, both within and without the relation of employer and employee, is a modern statutory innovation. The legislature may modify this right of action,

extend it or limit it, or even abolish it altogether. No person has a vested interest in any rule of law, entitling him to insist that it shall remain unchanged for his benefit. (Citing cases) The courts have repeatedly upheld the authority of the legislature to establish departures from the common law rules affecting the employer's liability for personal injuries to the employee. (Deibeikis v. Link-Belt Co., 261 Ill. 454.) The statute under consideration simply sets aside one body of rules to establish another system in its place. The employee or his personal representative is no longer able to recover as much as before in case of an injury growing out of the employer's negligence, but he is entitled to moderate compensation in all cases of injury, and has a certain and speedy remedy without the difficulty and expense of establishing negligence or proving the amount of the damages. Instead of assuming the entire consequences of all ordinary risks of the occupation, he assumes the consequences, in excess of the scheduled compensation, of risks, ordinary and extraordinary. On the other hand, the employer is left without defense respecting the question of fault, but he is at the same time assured that the recovery is limited and that it goes directly to the relief of the designated beneficiary, and just as the employee's assumption of ordinary risks at common law presumably was taken into account in fixing the rate of wages, so the fixed responsibility of the employer and the modified assumption of risk by the employee under the new system presumably will be reflected in the wage scale. The Act evidently is intended as a just settlement of a difficult problem affecting one of the most important of social relations, and it is to be judged in its entirety.

Much emphasis is laid upon the criticism that the Act creates liability without fault. It must be remembered that the modern tendency is to compensate for loss of earning power. Such a loss stands to the employee as his capital in trade. It is a loss arising out of the business in which he is employed, and, however it may be charged up, is an expense of the operation just as truly as the cost of repairing broken machinery or any other

expense that ordinarily is paid by the employer. On grounds of natural justice the business should bear this charge. The State by this kind of legislation relieves the employer from responsibility for damages measured by common law standards and payable in cases where he or those for whose conduct he is answerable are found to be at fault. It is not unreasonable for the State, in exchange, to require the employer to contribute a reasonable amount, according to a reasonable and definite scale, by way of compensation for the loss of earning power incurred in the common enterprise, irrespective of the question of negligence, instead of leaving the entire loss to rest where it may chance to fall,—upon the injured employee or his dependents and indirectly upon the State. The test of the validity of a law which creates liability without fault and under which the property of one is taken without compensation to pay the obligations of another, is not whether it does objectionable things, but whether there is any reasonable ground to believe that the public safety, health or general welfare is promoted thereby. The police power, under which such reasonable regulations are made, is a power inherent in every sovereignty; a power to govern men and things; a power to which the possession and enjoyment of rights are subject, and under which the legislature exercises supervision over matters affecting the common weal, and enforces the observance by each member of society of his duty to others and the community at large, and prescribes regulations promoting the health, peace, morals, education and good order of the people, and legislates so as to increase the industries of the State, develop its resources and add to its welfare and prosperity. (State v. Clausen, 65 Wash. 156; 117 Pac. 1101; Jensen v. Southern Pacific Co., 215 N. Y. 514; 109 N. E. 600; New York Central Railroad Co. v. White, supra; Arizona Copper Co. v. Hammer, supra.) The legislature has the power to bring these extra-hazardous employments under the Act without election, and the Act is not subject to the objection that the employer is deprived of his property without due process of law.

Our constitution provides that the right of trial by jury as heretofore enjoyed shall remain inviolate, but it guarantees that right only to those causes of action recognized by law. The Act here in question takes away the cause of action on the one hand and the ground of defense on the other and merges both in a statutory indemnity fixed and certain. If the power to do away with a cause of action in any case exists at all in the exercise of the police power of the State, then the right of trial by jury is therefore no longer involved in such cases. The right of jury trial being incidental to the right of action, to destroy the latter is to leave the former nothing upon which to operate. State v. Clausen, supra; Adams v. Iten Biscuit Co., supra; Moody v. Found, 208 Ill. 78; Cunningham v. Northwestern Improvement Co., 44 Mont. 180; 119 Pac. 544.

The committee of arbitration and the Industrial Commission are administrative bodies and have no judicial functions. (Savoy Hotel Co. v. Industrial Board, 279 Ill. 329.) The contention that the Act delegates judicial powers to the committee or the commission cannot be sustained. The Act is almost automatic in its practical working. The amounts to be paid are easy of computation and the person or persons to whom they shall be paid are fixed and certain. The commission has power to formulate rules and regulations not inconsistent with the provisions of the Act and to determine controversies which arise in the administration of the Act. If we are correct in our former conclusions that the Act affords due process of law and the right of trial by jury has not been violated, then it seems clear that any controversy which may arise concerning the mere administration of the Act may be decided in such summary manner as the legislature shall prescribe. Cunningham v. Northwestern Improvement Co., supra; Hunter v. Colfax Consolidated Coal Co. (Iowa), 154 N. W. 1037.

It is also urged that the statute strikes at the fundamentals of the constitutional freedom of contract, and our attention is called to declarations by this court in Ritchie v. People, 155 Ill. 98, Mathews v. People, 202 id.

389, and Kellyville Coal Co. v. Harrier, 207 id. 624. These declarations are qualified in Ritchie & Co. v. Wayman, 244 Ill. 509. We recognize that the legislation under review does measurably limit the freedom of employer and employee to agree respecting the terms of employment, and that it cannot be supported except on the ground that it is a reasonable exercise of the police power of the State. In our opinion it is fairly supportable on that ground. The subject matter in respect of which freedom of contract is restricted is the matter of compensation for human life lost or disability incurred in the course of hazardous employment, and the public has a direct interest in this as affecting the common welfare. The whole is no greater than the sum of all its parts, and when the individual health, safety and welfare are sacrificed or neglected the State must suffer. The authority of the State to prohibit contracts made in derogation of a lawfully established policy of the State respecting compensation for accidental death or disabling personal injury is perfectly clear. (New York Central Railroad Co. v. White, supra.) The act is not subject to the constitutional objections urged against it."[8]

§ 67. Classification of industries. A workmen's compensation statute is essentially class legislation, and none may be drawn without more or less classification of a particular kind. Danger has always been recognized by the courts as a legitimate basis for classification, provided the classification itself is not unreasonable and arbitrary.

The cases seem clearly to recognize a legislative power to differentiate hazardous from non-hazardous employments in subjecting the former to special regulation. There would seem to be no legitimate reason for denying this power, in the framing of a workmen's Compensation Act, to the extent at least of excluding non-hazardous employments.

The State undoubtedly may, within reasonable limits,

[8] Grand Trunk Western Ry. Co. v. Industrial Commission, 291 Ill. 167.

distinguish, select and classify objects of legislation. The selection or classification, to be faulty, must be unreasonable, or arbitrary. If beneficial or necessary for the public convenience or interest, they are within the legislative power. The guaranties of the fourteenth amendment are satisfied when all persons, under like circumstances and conditions are treated alike.[4]

The classification of industries adopted in the Illinois Act, is the classification of the French law, with some additions and amplifications. The decisions under the English Act are therefore of no assistance in defining the words used, and the reports of the French cases are not easily accessible. Many questions arise as to the meaning of the language used in describing the several classes of industries covered by the Act, but all such questions should be determined with reference to the popular and ordinary meaning of the terms employed.[5]

It has been said that the purpose of the Workmen's Compensation Act in specifying certain hazardous occupations as extra-hazardous is to secure to employees engaged in such occupations a greater degree of protection than was offered by the law previous to the enactment of the Act, and it was not the intention to extend the provisions of the Act to occupations not having any connection with the extra-hazardous occupations mentioned.[6]

The Act relates to "enterprises or businesses" only, and an "enterprise" has been defined as "an undertaking something projected and attempted, an attempt or project, particularly an undertaking of some importance, or one requiring boldness, energy or perseverance, an arduous or hazardous attempt."[7]

It is a question of law for the courts whether any act of any person or any accident comes within the classifica-

[4] Casparis Stone Co. v. Industrial Board, 278 Ill. 77, 15 N. C. C. A. 388; Johnson v. Kennecott, 248 Fed. 407.

[5] Fenton v. Thorley & Co., (1903), A. C. 443.

[6] Seggebrush v. Industrial Commission, 288 Ill. 163; Vaughan's Seed Store v. Simonini, 275 Ill. 477, 14 N. C. C. A. 1075.

[7] Uphoff v. Industrial Board, 271 Ill. 317, 13 N. C. C. A. 80; see § 116, *post*.

tion of the Act, and not a question of fact for the conclusive decision of the Industrial Commission.[8] It has been held that authority to declare industries extra-hazardous cannot be delegated to the Commission administering the law.[9]

It has been said that the reason for this classification of hazardous employments is that those engaged in such occupations are subject to special risks and hazards peculiar to the occupations enumerated, and not common to other employments, and that society should, in justice, bear a portion of the burden arising from the accidental injuries peculiar to the risks of those employments, as a part of the cost of such business.[10]

§ 68. "The erection, maintaining, removing, remodeling, altering or demolishing of any structure." It should be borne in mind that this law relates to "enterprises or businesses" and to those employers and employees engaged therein, and in construing the language of any portion of the Act, this fact should be considered as of controlling importance. It is not the single, isolated act of erection, or maintaining or removing of a structure that brings the person doing it under the Act, nor is it such an act of erection, maintaining or removal when it is merely incidental to a person's other and regular business, which is not extra-hazardous in its character. For example, incidental building and repair work by a farm hand, does not fall within the classification of hazardous employments set forth in the Act, for in such cases the business of building or contracting is not engaged in for pecuniary gain, but is merely incidental to the business of farming, which is non-hazardous, under the statute.[11] But on the other hand if an employer

[8] Courter v. Simpson Construction Co., 264 Ill. 488, 6 N. C. C. A. 548; Uphoff v. Industrial Board, 271 Ill. 312, 317, 13 N. C. C. A. 80; Strader v. Stern Bros., 172 N. Y. Supp. 482.

[9] State v. J. B. Powles & Co., 162 Pac. (Wash.) 569.

[10] Mueller v. Industrial Board, 283 Ill. 148, 16 N. C. C. A. 902.

[11] Uphoff v. Industrial Board, 271 Ill. 312, 13 N. C. C. A. 80; Coleman v. Bartholomew, 161 N. Y. Supp. 560, 16 N. C. C. A. 601; North, Admr., v, Board of Tr. of U. of Ill., 201 Ill. App. 449, 11 N. C. C. A. 80; Geller v. Republic Novelty Wks., 168 N. Y. Supp. 263, 16 N. C. C. A. 644.

is engaged in several lines of business, one or more of which may be hazardous, such hazardous lines would be subject to the Act, and should not be excepted as being incidental to the non-hazardous business, if they are carried on by the employer as distinct enterprises for pecuniary gain. For example, an employer has been held to be under the Act as a lumberman, and not under it as to his farming business.[12]

Under the provisions of Section 1 of the Illinois Act, *any* employer may by affirmative action bring himself within the terms of the law, whether he be engaged in an "enterprise or business" or not,—but aside from this class, thus filing affirmative notices of election to accept the Act, it does not relate to any employer who is not carrying on one or more of the industries enumerated in Section 3. The statute, therefore, with the exception noted, does not apply to single instances of employment of a temporary character, unconnected with the employer's regular business. This distinction is emphasized by the provision found in Section 5 of the Act, where in defining who shall be considered employees it is stated that the word shall not include "any person who is not engaged in the usual course of the trade, business, profession or occupation of his employer."[13]

It therefore follows that a merchant or professional man who employs a painter to paint his dwelling house, would not be an "employer" maintaining a structure, within the classification of the Act;[14] nor would a man hiring an independent contractor to put a foundation under his dwelling house;[15] nor a merchant or professional man who employs a chauffeur to drive his automobile, for his own personal and private use, although the chauffeur might at other times do work for his em-

[12] Kauri v. Messner et al., 164 N. W. (Mich.) 537, 7 N. C. C. A. 466.

[13] See *post*, p. 196.

[14] Johnson v. Choate, 284 Ill. 214; McGregor v. Danahen, (1899), 1 F. 536; Stead v. Moore, (1900), Times, June 18, C. A.

[15] Alabach v. Industrial Commission, 291 Ill. 338; see also: Holbrook v. Olympia Hotel Co., 166 N. W. (Mich.) 876, 17 N. C. C. A. 683; Bargey v. Massaro Macaroni Co., 218 N. Y. 410, 11 N. C. C. A. 322; Solomon v. Bonis, 167 N. Y. Supp. 676, 16 N. C. C. A. 675.

ployer driving a truck in a hazardous enterprise.[16] The erection or maintaining of a dwelling house by the owner, which is neither the enterprise or business of the owner, does not bring him within the Act, which makes extra-hazardous the erection or maintaining of a structure, but it has been held that the owner of a large building, rented as a lodge and dance hall and for offices, whose occupation is the maintaining of the building, is within the terms of the Act.[17] Again, the owner of a building, residing therein, who employs a man to calcimine the walls, and incidentally he does some plastering preparatory to covering the walls with calcimine, is not engaged in "building, repairing or demolishing" within the statute.[18] But under a statute excluding workmen employed "casually *and* not in the usual course of the employer's business" it has been held that a carpenter working by the day for an employer in building a house to be occupied by him and his family, is an employee under the Act, inasmuch as he is not a casual employee.[19]

It is obvious that in the cases mentioned, the employment has no relation whatever to the employer's regular business. The employer in either case is clearly not engaged in the particular employment relation mentioned in any of the "extra-hazardous" industries referred to in the Act. It is held that the Illinois Act, and especially the hazardous classification of Section 3, relates to the business and not to the person of the employer.[20] An employer claiming that he is not under the Act must raise such question affirmatively not only before the Industrial Commission but before the court upon review.[21]

§ 69. "Erection"—defined. It is obvious that Paragraph 1 of Section 3 relates to the general business of

[16] Wincheski v. Morris, 166 N. Y. Supp. 873, 16 N. C. C. A. 680.

[17] Johnson v. Choate, 284 Ill. 214.

[18] Hungerford v. Bonn, 171 N. Y. Supp. 280, 17 N. C. C. A. 687.

[19] Armstrong v. Industrial Accident Commission, 171 Pac. (Cal.) 321; see also: Schmidt v. Berger, 116 N. E. (N. Y.) 382.

[20] Vaughn's Seed Store v. Simonini, 275 Ill. 477, 14 N. C. C. A. 1075; Sanitary District v. Industrial Board, 282 Ill. 182, 16 N. C. C. A. 697.

[21] Bristol & Gale Co. v. Industrial Commission, 292 Ill. 16; Hoffman v. Knisely, 199 Ill. App. 530, 15 N. C. C. A. 235.

building construction and the care, maintenance and use of such buildings; and that, therefore, the word "erection" should be construed to mean to build,[22] or to build up or to construct,[22a] and not merely to the raising or setting up in an upright or perpendicular position of some structure other than a building. It might properly be held, however, that the word would include a building which had not been completed for it has been stated that "a building may be said, without doing violence to language, to be erected when the walls are up and the material on the ground to complete it."[23]

§ 70. "Maintain"—defined. The word "maintain" has been defined by the Illinois Supreme Court, and distinguished from "operation,"[24] as follows: "The first and primary definition given to the word 'maintain' both in Webster's Unabridged Dictionary and in Webster's International Dictionary, is 'to hold or keep in any particular state or condition.' And we think that is the proper meaning to give to the word under the Act * * * The word 'operate' does not mean the same thing as either the word 'construct,' the word 'maintain' or the expression 'keep in repair,' and is not included in the significations of either. Webster defines the word 'operate' as meaning 'to put into, or to continue in operation or activity.' "[25]

The maintaining of a building, therefore, which is rented out to tenants for offices and other purposes, and carried on as a business by the owner, is the maintaining of a structure within the meaning of the statute.[26] Also one whose only occupation is maintaining and repairing

[22] Fort Huron, etc., R. Co. v. Richards, 90 Mich. 577, 579; McGary v. People, 45 N. Y. 153, 161; Carroll v. Litchberg, 84 Va. 803, 804.

[22a] Eichleay v. Wilson, 42 Wkly. Notes (Pa.) 525, 527; State v. Brown, 16 Conn. 54, 57; Parker v. Floyd, 32 Misc. (N. Y.) 474, 477; Ott v. Sweatman, 166 Pa. State 217, 229; Brown v. Graham, 58 Tex. 254, 256.

[23] Johnston v. Ewing Female University, 35 Ill. 518, 529.

[24] McChesney v. Hyde Park, 151 Ill. 634, 646, 7 Ill. Notes, p. 65, § 314.

[25] *Ibid*, 646.

[26] Johnson v. Choate, 284 Ill. 214; Zubradt v. Shepard's Est., 167 N. Y. Supp. 306, 16 N. C. C. A. 644.

a dozen or more buildings owned by him, for which purpose he employs a foreman with authority to employ other persons and direct their work, the wages to be paid by such owner, is engaged in the business of maintaining buildings within the meaning of the Act;[27] and the business of washing and cleaning windows has been held to be a hazardous occupation under this provision,[28] and also, the sweeping of streets has been held to be "maintaining a structure."[29]

But an employee whose only duty was to assist in pulling a large float over the soft concrete mixture, after it had been placed upon the roadway, is not engaged in building or maintaining a structure,[30] nor is a man employed on a dirt road.[31] And a carpenter employed to build some shelves in a store, is not an employee of the owner of the store, and the fact that the workman is at the time engaged himself in the *work* mentioned in the statute, does not operate to include the employer in the class of those engaged in the *business* of carpentry.[32] And on the same principle it was held that a janitor of an apartment house who falls from a step-ladder while he is engaged in planing off the top of a door, does not come within the terms of the act.[33]

The Court of Appeal of British Columbia has held that the work of clearing land of the natural growth thereon, was not a work of "construction, alteration or repair."[34]

§ 71. "Removing, remodeling, altering or demolishing,"—defined. These words obviously have reference only to the business of removing, remodeling, altering or demolishing of buildings, as carried on by persons engaged in the general building or contracting business,

[27] Storrs v. Industrial Commission, 285 Ill. 595.

[28] Chicago Cleaning Co. v. Industrial Board, 283 Ill. 177, 16 N. C. C. A. 683, 928.

[29] City of Rock Island v. Industrial Commission, 287 Ill. 76.

[30] Brennan v. Industrial Commission, 289 Ill. 49.

[31] McLaughlin v. Industrial Board, 281 Ill. 100, 16 N. C. C. A. 677, 682.

[32] Geller v. Republic Novelty Wks., 168 N. Y. Supp. 263, 16 N. C. C. A. 644.

[33] Schmidt v. Berger, 116 N. E. (N. Y.) 382.

[34] Basanta v. Canadian Pac. Ry. Co., 5 B. W. C. C. 723, 16 B. C. R. 304.

and not to single acts of removing or remodeling buildings which might technically fall within the definition of the words used, but which acts are not done in the usual course of the person's business. The terms should be interpreted and applied to the circumstances of each case in accordance with their popular and ordinary meaning.[35]

§ 72. "Structure,"—defined. As employed in this statute, the word structure should be construed to mean a *building,* rather than any production or piece of work artificially built up or composed of parts joined together in some definite manner.[36] The Illinois Supreme Court in considering the meaning of the word "structure" as here used, said: "To say that the word 'enterprise' covered the building of any structure, however small, would lead, in some instances, to absurd consequences. A chicken coop or dog kennel ten feet square and four or five feet high would be a 'structure' in a technical sense of the term, but it would hardly be contended that such a structure was within the meaning of the Act, according to the intent of the legislature. It is plain from the use of the word 'enterprise' in other subdivisions of said paragraph (b) that it was intended to mean a work of some importance that might properly be considered arduous or hazardous."[37]

§ 73. "Structure,"—includes what. It has been held that the word "structure" includes a bay window;[38] a boiler and engine constructed upon a permanent foundation;[39] a car;[40] a fence;[41] a vessel;[42] railroad tracks;[43]

[35] Fenton v. Thorley & Co., (1903), A. C. 443; Uphoff v. Industrial Board, 271 Ill. 312, 13 N. C. C. A. 80. See also § 116, *post.*

[36] Anderson v. State, 17 Tex. App. 305, 310; (quoting Webster's Dict.), Conley v. Lack. I. Co., 94 N. Y. App. Div. 149, 152.

[37] Uphoff v. Industrial Board, 271 Ill. 312, 13 N. C. C. A. 80.

[38] State v. Keen, 69 N. H. 122, 126.

[39] Phoenix Ins. Co. v. Luce, 110 Cir. Ct. 476, 483, 5 Ohio Cir. Dec. 210.

[40] Caddy v. Interborough Rapid Transit Co., 125 N. Y. App. Div. 681, 683.

[41] Karasek v. Peier, 22 Wash. 419, 424.

[42] Chaffee v. Union Dry Dock Co., 68 N. Y. App. Div. 578, 583; Gruner v. Texas Co., 117 N. Y. Supp. 741-2.

[43] New York, etc., R. Co. v. New Haven, 70 Conn. 390, 396.

an office in the corner of a hardware room, made of pickets four feet high, one inch square and three inches apart, in which the account books, etc., of a lumber company are kept;[44] a permanent city street;[45] and road building.[46]

§ 74. "Structure,"—Does not include: a common dirt road;[47] a farmer's corn shed;[48] a fence enclosing a right of way;[49] a portable boiler;[50] or a train.[51]

§ 75. "Construction, excavating or electrical work," —construed. Again, it should be borne in mind that it is the *business* of doing "construction, excavating or electrical work" that is covered by the statute,—not necessarily every case in which such "work" is done. An English court in considering the definition of the word "work" said: "The word 'work' is used in two senses. In the first part it is used as meaning the labor bestowed, and in the second place as meaning that upon which the labor is disposed."[52] The second meaning is the one which should control the construction of the language used here. It is not the *labor* which is referred to, but the objects upon which the work is disposed, as an occupation or business. For example it has been held that the term "engineering work" refers to establishments and places of business rather than the character of the labor done, and does not include or refer to the work of an engineer on a public highway.[53] But it is held that "work" may include the procuring of men and materials for doing the work in which the employer is engaged.[54]

[44] Anderson v. State, 17 Tex. App. 305, 310.

[45] City of Rock Island v. Industrial Commission, 287 Ill. 76.

[46] Lanigan v. Town of Sangerties, 167 N. Y. Supp. 654, 16 N. C. C. A. 638.

[47] McLaughlin v. Industrial Board, 281 Ill. 100, 16 N. C. C. A. 677, 682.

[48] Uphoff v. Industrial Board, 271 Ill. 312, 13 N. C. C. A. 80.

[49] State v. Walsh, 43 Minn. 444, 445.

[50] Conley v. Lack. I. Co., 94 N. Y. App. Div. 149, 152.

[51] Lee v. Barkhamsted, 46 Conn. 213, 217.

[52] Atkinson v. Lumb, (1903), 1 K. B. 861, 5 W. C. C. 106.

[53] Board of Commissioners v. Grimes, 182 Pac. (Okla.) 897.

[54] Lanagan v. Town of Sangerties, 167 N. Y. Supp. 654, 16 N. C. C. A. 638.

Any kind of excavation that is attended with more than the ordinary dangers of a simple occupation is considered extra-hazardous within the meaning of the section under consideration, and this includes the digging of sewer trenches with shovel and spade.[55] As to "simple occupations" it is said "the digging of post holes, or the digging of small drains for the surface drainage of houses or tents to prevent flooding with surface water in time of rains, would not be more hazardous than simple occupations, and * * * such occupations, while in a sense coming within the common definition of 'excavating' would not be deemed and held extra-hazardous."[56]

§ 76. "Construction,"—defined. The word "construction" as here employed, should be given the same meaning as building, or erection. "Construction" and "erection" seem to be synonymous in their meaning, and mean the building of a structure, by putting together the necessary material and raising it.[57] It has been held to include "alterations or repairs;"[58] and to be synonymous with "construct and repair."[59]

§ 77. "Carriage by land or water, and loading and unloading in connection therewith,"—construed. The word "carriage" probably would be construed to include all kinds of transportation, whether public or private, if that is the *business* in which the employer is engaged, but probably would not include such carriage as was incidental to a non-hazardous industry, or an industry not included expressly or by proper construction, within the classification as set forth in Section 3 (b) of the Act. Thus, a merchant, who as an incident to the carrying on of his business and for the convenience of his customers, makes deliveries of goods purchased, is not properly speaking engaged in the business of carriage, and unless the business itself, in which he is engaged, is covered by

[55] Scully v. Industrial Commission, 284 Ill. 567, 17 N. C. C. A. 949.

[56] *Ibid.*

[57] Burke v. Brown, 10 Tex. Civ. App. 298, 299.

[58] Hancock's Appeal, 115 Pa. St. 1.

[59] Gurnee v. Chicago, 40 Ill. 165, 2 Ill. Notes, p. 613, § 213; McNair v. Ostrander, 1 Wash. 110, 115.

the classification, the fact that he incidentally carries goods to his trade, will not operate to drag him into the classification, and subject him to the provisions of the law.

A teamster hauling crushed stone for a teaming company which is engaged by another company to haul the stone for paving work is employed in the hazardous occupation of "carriage by land," within the meaning of these terms.[60] But it is also held that the undertaking business is not an occupation which is included in the Act as extra-hazardous, and the operation of vehicles to carry persons to funerals and burials conducted by an undertaker does not bring the business within the extra-hazardous occupation of "carriage by land" within the meaning of the Act; and an undertaker who occasionally lets his cars and drivers to another undertaker for use at funerals does not thereby become a carrier of passengers by land, within the meaning of the act.[61] The driver of a gasoline wagon, whose employer regularly delivers gasoline throughout the county in gasoline wagons, who is killed by a fall from the wagon when returning from making delivery of gasoline was held to be covered by the Act;[62] and also a teamster employed to deliver ice, for an employer engaged in the business of selling and delivering coal, ice, wood, etc., who is kicked by a horse while feeding his team in the barn.[63] On the other hand it is held that the driver of a milk wagon for a dairy company is not engaged in an extra-hazardous occupation where his duties do not connect him with any extra-hazardous features of the business in which his employer may be engaged.[64] A retail coal dealer, who delivers coal to his customers as an incident to the business, is not within the classification;[65] nor a water com-

[60] Parker-Washington Co. v. Industrial Board, 274 Ill. 498, 14 N. C. C. A. 127, 653, 1079.

[61] Hochspeier v. Industrial Board, 278 Ill. 523, 14 N. C. C. A. 150.

[62] Gibson v. Industrial Board, 276 Ill. 73, 16 N. C. C. A. 636.

[63] Suburban Ice Co. v. Industrial Board, 274 Ill. 630, 14 N. C. C. A. 132, 779, 1080; Days v. Trimmer, 162 N. Y. Supp. 603, 15 N. C. C. A. 680.

[64] Bowman Dairy Co. v. Industrial Commission, 292 Ill. 284.

[65] Fruit v. Industrial Board, 284 Ill. 154, 16 N. C. C. A. 685.

pany hauling water to customers in parts of the city not reached by the pipe lines.[66]

Of course the "loading and unloading," as expressly stated in the Act, must be in connection with the business of carriage, and the business of loading and unloading in itself is not covered by the Act. But it is not essential that the carrier must in addition to the business of carriage be also in all cases engaged in loading and unloading in connection therewith before he will be held within the terms of the classification,[67] and the words "loading and unloading," according to common usage and understanding, apply as well to passengers as to freight, and to street railways as well as to steam railways, and loading and unloading passengers on street railways is connected with the carriage of such passengers.[68] And it is held under the New York Act that a driver of a truck for a brewing company, injured by the fall of an elevator used in loading and unloading the truck, is covered.[69] But it was held under the same Act that the splitting of wood as an incident to the future loading of the wood, and the delivery of it by a carrier for whom the employee was working is not the business of carriage, so as to bring the employee within the act.[70]

Since the decision of the Illinois cases referred to in this section holding that carriage, which is merely incidental to the prosecution of some other industry which is the principal business of the employer, is not within the classification of "carriage by land or water," the Act has been amended by adding the words "including the distribution of any commodity by horse drawn or motor driven vehicle, where the employer employs more than three employees in the enterprise or business;" etc.[71]

If the doctrine of the Illinois Supreme Court, established under the former provisions of the Elective Act, is

[66] Mattoon Clear Water Co. v. Industrial Commission, 291 Ill. 487.

[67] Chicago Railways Co. v. Industrial Board, 276 Ill. 112, 15 N. C. C. A. 164.

[68] *Ibid.*

[69] Winter v. Peter Doelger Brewing Co., 162 N. Y. Supp. 469, 14 N. C. C. A. 907.

[70] Casterline v. Gillen, 169 N. Y. Supp. 345, 16 N. C. C. A. 646.

[71] Laws of Ill. 1919, p. 538.

to be adopted by the court under the Compulsory Act, it is very doubtful whether the language of the amendment above quoted would be sufficient to cover such carriage or distribution of commodities, which is merely incidental to the principal business carried on by the employer. The Supreme Court of Illinois has said:

"The statute does not undertake to specifically define or specifically describe every business, occupation or enterprise that it classifies as extra-hazardous, but it is clear that no business should be held to be extra-hazardous unless it is in fact extra-hazardous *per se*, or is rendered extra-hazardous when conducted under the conditions and surroundings named in the statute."[72]

The language of the amendment referred to makes the Act apply to an employer who "employs more than three employees in the enterprise or business" of carrying or distributing commodities; and the entire section relates to the "enterprise or business" in which the employer is engaged and not to possible hazardous incidents of a non-hazardous enterprise or business. By the language of the first paragraph of the section, the section only relates to "the following enterprises or businesses which are hereby declared to be extra-hazardous;" which means that any business described in that section must be extra-hazardous in fact.[73]

The mere delivery of commodities in connection with the customary delivery service of a merchant might easily be not hazardous *per se*, although the business of the employer, of which the delivery service was an incident, might itself be hazardous by reason of power driven machinery, elevators or other dangerous equipment maintained at his place of business. Of course, if the employer is engaged in the enterprise or business of distributing any commodity by horse drawn or motor

[72] Hahnemann Hospital v. Industrial Commission, 282 Ill. 316; Bowman Dairy Co. v. Industrial Commission, 292 Ill. 284. See also: Scully v. Industrial Commission, 284 Ill. 567, 17 N. C. C. A. 949; Seggebruch v. Industrial Commission, 288 Ill. 163; Brennan v. Industrial Commission, 289 Ill. 49; Uphoff v. Industrial Board, 271 Ill. 312, 13 N. C. C. A. 80.

[73] Hahnemann Hospital v. Industrial Commission, 282 Ill. 316, 16 N. C. C. A. 666, 681, 746.

driven vehicles and employs more than three employees, he would fall within the classification of the amendment referred to and his employees would be subject to the Act.[74]

If it should be held, however, under the compulsory features of the Act that it is a police power regulation and, therefore, if applicable at all to the employer's industry, it applies to all his employees, whether actually exposed to hazard or not, then, if the character of the employer's business is such as to bring him within the hazardous classification, the employees engaged in the incidental service of the delivery of commodities manufactured or sold by such employer would be within the Act, regardless of this amendment.[75]

§ 78. Carriage,—admiralty cases. The language "carriage by water" could not be held to include carriage by water in the coast wise or general maritime trade, in view of the provision of the Federal Constitution [76] creating the admiralty jurisdiction of the Federal courts, and Section 9 of the Judiciary Act of 1789, giving all District Courts of the United States exclusive cognizance of all civil causes of admiralty and maritime jurisdiction.[77] It has been held, however, that a seaman injured while in the course of his employment on a vessel owned by a citizen of California, while such vessel is lying in a California harbor, is entitled to recover under the State law.[78] And this rule was extended in California

74 See definition of "enterprise" in Uphoff v. Industrial Board, 271 Ill. 312; and North, Administrator, v. Board of Trustees of the University of Illinois, 201 Ill. App. 449, 11 N. C. C. A. 80.

75 See § 95. *Post:* "WHAT EMPLOYEES IN HAZARDOUS INDUSTRIES ARE COVERED."

76 Art. III, § 12.

77 Chap. 20, 1 Stat. at L. 73, 76, 77, Comp. Stat. §§ 530, 991; Southern Pac. Ry. Co. v. Jensen, 244 U. S. 205, 37 Sup. Ct. Rep. 524, 14 N. C. C. A. 597, 725; Shanghuessy v. Northland, 162 Pac. (Wash.) 546; Schuede v. Zenith S. S. Co., 216 Fed. 566; Clyde S. S. Co. v. Walker, 244 U. S. 255, 37 Sup. Ct. Rep. 545; Veasey v. Peters, 77 So. (La.) 948; Sterling v London G. & A. Co., Ltd., 124 N. E. (Mass.) 286; Duart v. Simmons, 121 N. E. (Mass.) 10. As to what is a maritime occupation, see: Northern Pac. S. S. Co. v. Industrial Accident Commission, 163 Pac. (Cal.) 203, and Steamship Bowdoin Co. v. Pillsbury et al., 163 Pac. (Cal.) 204.

78 Northern Pac. S. S. Co. v. Industrial Accident Commission, 163 Pac. (Cal.) 203; Steamship Bow-

prior to the decision in the Jensen case,[79] even to seamen injured on the high seas, on the ground that Congress had not acted, and that therefore the State of California was authorized to legislate on the subject.[80] It has been held in Wisconsin that the repairing of a boat which had been used in the maritime service, and which was again to be used in a maritime employment, would be within the admiralty jurisdiction of the Federal Courts under the Jensen case.[81] In a Texas case an employee was drowned by the capsizing of a boat in a storm off the coast of Texas, while engaged as assistant engineer on a dredge boat, and it was held that it was a case for admiralty jurisdiction.[82] The maritime jurisdiction of the Federal courts does not extend to claims arising out of construction work done upon a vessel prior to its launching.[83]

But the Judiciary Act of 1789 has, since the decision of the United States Supreme Court in the Jensen case, been amended, leaving to the individual states jurisdiction to enact compensation laws covering employment cases.[84]

The obvious intention of this amendment was to permit legislation by the several states on the subject of workmen's compensation, even in employments in the maritime service, and to permit claimants in such service to recover for injuries sustained therein under the local compensation law rather than in the admiralty

doin Co. v. Pillsbury et al., 163 Pac. (Cal.) 204. See also: Alaska Pac. S. S. Co. v. Pillsbury, 163 Pac. (Cal.) 204; and Riegel v. Higgins, 241 Fed. 718.

[79] 244 U. S. 205.

[80] Northern Pac. S. S. Co. v. Industrial Accident Commission, 163 Pac. (Cal.) 199; see *contra:* Southern Pac. Ry. Co. v. Jensen, 244 U. S. 205, and Tallac v. Pillsbury, 168 Pac. (Cal.) 17.

[81] Neff v. Industrial Commission, 164 N. W. (Wis.) 845.

[82] Southern Surety Co. v. Stubbs, 199 S. W. (Tex.) 343.

[83] Employer Lia. Assur. Corp. v. Industrial Accident Com., 171 Pac. (Cal.) 935.

[84] See "An Act to amend Sections 24 and 256 of the Judicial Code, relating to jurisdiction of the District Courts, so as to save to claimants the rights and remedies under the Workmen's Compensation Law of any state," approved October 6, 1917, Chap. 97, 40 Stat. at L. 395, Comp. Stat. § 991 (3), Fed. Stat. Anno. Supp. 1918, p. 401.

courts of the United States. After this amendment was adopted it was held that the state compensation law did not operate to limit a seaman's rights in admiralty and if he was entitled in the admiralty courts to more than he would be allowed under the compensation law he might proceed in admiralty.[85] In other words, under the amended Federal Judiciary Code, it was held that the plaintiff might elect to proceed in admiralty or in the State courts.[86]

The Supreme Court of the United States has since held, however, that the Act of Congress, amending the Judiciary Act so as to leave to the several states jurisdiction over accidents in maritime employments, is unconstitutional.[87] In this case the Federal Supreme Court says:

"As the plain result of these recent opinions and the earlier cases upon which they are based, we accept the following doctrine: The Constitution itself adopted and established, as part of the law of the United States, approved rules of the general maritime law, and empowered Congress to legislate in respect of them and other matters within the admiralty and maritime jurisdiction. Moreover, it took from the states all power, by legislation or judicial decision, to contravene the essential purposes of, or to work material injury to, characteristic features of such law, or to interfere with its proper harmony and uniformity in its international and interstate relations. To preserve adequate harmony and appropriate uniform rules relating to maritime matters and bring them within control of the Federal government was the fundamental purpose; and to such definite end Congress was empowered to legislate within that sphere.

Since the beginning, Federal courts have recognized

[85] Riegel v. Higgins, 241 Fed. 718.

[86] Dziengegewsky v. Turner & Blanchard, Inc., 176 N. Y. Supp. —; Rhode v. Grant Smith Porter Co., 259 Fed. (Ore.) 304; Thornton v. Grand Trunk-Milwaukee Car Ferry Co., 168 N. W. (Mich.) 410; Cimmino v. Clark, 172 N. Y. Supp. 478; *contra:* Ruddy v. Morse Dry Dock & Repair Co., 176 N. Y. Supp. 731.

[87] Knickerbocker Ice Co. v. Stewart, 15 U. S. Supreme Court Advance Opinions 1919-20, p. 526 (May 17, 1920).

and applied the rules and principles of maritime law as something distinct from the laws of the several states,—not derived from or dependent on their will. The foundation of the right to do this, the purpose for which it was granted, and the nature of the system so administered, were distinctly pointed out long ago. 'That we have a maritime law of our own, operative throughout the United States, cannot be doubted * * * One thing, however, is unquestionable: the Constitution must have referred to a system of law co-extensive with, and operating uniformly in, the whole country. It certainly could not have been the intention to place the rules and limits of maritime law under the disposal and regulation of the several states, as that would have defeated the uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the states with each other or with foreign states. The Lottawanna (Rodd v. Heartt) 21 Wall. 558, 574, 575, 22 L. ed. 654, 661, 662.' * * *

Having regard to all these things, we conclude that Congress undertook to permit application of workmen's compensation laws of the several states to injuries within the admiralty and maritime jurisdiction; and to save such statutes from the objections pointed out by Southern P. Co. v. Jensen. It sought to authorize and sanction action by the states in prescribing and enforcing, as to all parties concerned, rights, obligations, liabilities, and remedies designed to provide compensation for injuries suffered by employees engaged in maritime work.

And, so construed, we think the enactment is beyond the power of Congress. Its power to legislate concerning rights and liabilities within the maritime jurisdiction, and remedies for their enforcement, arises from the Constitution, as above indicated. The definite object of the grant was to commit direct control to the Federal government; to relieve maritime commerce from unnecessary burdens and disadvantages incident to discordant legislation; and to establish, so far as practicable,

harmonious and uniform rules applicable throughout every part of the Union.

Considering the fundamental purpose in view and the definite end for which such rules were accepted, we must conclude that in their characteristic features and essential international and interstate relations, the latter may not be repealed, amended, or changed except by legislation which embodies both the will and deliberate judgment of Congress. The subject was intrusted to it, to be dealt with according to its discretion,—not for delegation to others. To say that because Congress could have enacted a compensation act applicable to maritime injuries, it could authorize the states to do so, as they might desire, is false reasoning. Moreover, such an authorization would inevitably destroy the harmony and uniformity which the Constitution not only contemplated, but actually established,—it would defeat the very purpose of the grant. See: Sudden & Christensen v. Industrial Acci. Commission, —— Cal. ——.

Congress cannot transfer its legislative power to the states,—by nature this is nondelegable."

Under this decision of the Supreme Court of the United States all accident cases arising in maritime employments are within the exclusive jurisdiction of the admiralty courts of the United States and the several states have no power to extend the operation of the state compensation law to such cases, and Congress is not authorized, under the Federal constitution, to delegate to the several states authority to legislate in such cases.

§ 79. "The operation of any warehouse, or general or terminal storehouses,"—construed. A warehouse may be defined as a place where goods are received in store for profit.[88] It may be a place owned by the warehouseman, or hired by him of a third person, or even of the owner of the goods.[89]

One engaged in the warehouse business, within this definition, viz., the business of receiving goods for stor-

[88] 40 Cyc. 400.

[89] Union Trust Co. v. Wilson, 198 U. S. 530, 538, 49 L. Ed. 1154.

age for a consideration, would be considered as conducting a public warehouse, within the meaning of the Illinois Constitution, which provides: "All elevators or storehouses where grain or other property is stored for a compensation, whether the property stored be kept separate or not, are declared to be public warehouses."[90] Under this provision, it has been held that an elevator in which grain is stored, is a warehouse.[91] Storehouses, warehouses and elevators, therefore, would seem to stand on the same footing under the Illinois law, and those engaged in the business of carrying on either, would be included within the provisions of the Act, provided, only, they receive goods for storage for compensation. The conduct of a private warehouse or storehouse, for one's own private purposes, would not bring the owner within the terms of the Act.

The Supreme Court of Oregon offers this definition: "A place where any of the commodities enumerated * * * is received on storage for the owner, by some person or corporation engaged in the general business of receiving such goods in store for compensation or profit."[92]

Under the compensation law of New York, "storage" has been defined as a permanent keeping or holding of goods to await some future contingency, and that the term is not properly applied to merchandise which a merchant has on hand for immediate sale and disposition. Under this rule it was held that conducting a retail coal business and keeping on hand for such immediate sale large quantities of coal was not conducting a storage business.[93] However, it has been held in Illinois that a building in which a meat corporation stores the products pending their sale and distribution to local dealers is a "warehouse or general terminal storehouse" within the meaning of the Act, even though no goods are

[90] Ill. Const., (1870), Art. 13, § 1.

[91] Pontiac Natl. Bank v. Langan, 28 Ill. App. 401, 406, 9 Ill. Notes, p. 425, § 186.

[92] State v. Stockman, 30 Ore. 36.

[93] Roberto v. John F. Schmadeke, Inc., 167 N. Y. Supp. 397, 16 N. C. C. A. 687.

stored for the public for hire.[94] It is generally held that such storage as is incidental to the general merchandising business is not properly characterized as the operation of a warehouse or storehouse. For example, a produce dealer, handling domestic fruits and vegetables and doing whatever storage was involved as an incident to his business, is not engaged in the business of storage, the storage being an incident of his business rather than the business itself.[95]

Also, the collecting of bottles from the city dump and the buying of second-hand bottles wherever offered, in carload lots, wagon loads, or by the barrel, or otherwise, and storing them in a building in connection with the office of the company until the bottles are sold, does not constitute the business of storage.[96]

§ 80. "Mining, surface mining or quarrying,"—defined. These words have a pretty well-defined meaning in the law. "Mining" is a generic term, which includes the whole mode of obtaining metals and minerals from the earth.[97] In the olden days it was confined to subterraneous excavations,[98] but later has been extended to quarries, or almost any place where anything is dug.[99]

"Quarrying" is the taking of stone or rock from the earth, by cutting or blasting or the like, and a quarry is usually distinguished from a mine, in the generic sense, by being widely open at the top and front.[1] As defined by the lexicographers, it is similar to a mine in the sense that the material removed, be it mere rock or stone or valuable marble, is removed because of its value for some other purposes, and in the sense that it is not removed for the purpose of improving the property from

94 Armour v. Industrial Board, 275 Ill. 328. But see Armour v. Industrial Board, 197 Ill. App. 363.

95 Dugan v. McArdle, 172 N. Y. Supp. 27.

96 Kronberger v. Harlem Bottle Co., 167 N. Y. Supp. 400. See also Walsh v. F. W. Woolworth Co., 167 N. Y. Supp. 394.

97 Williams v. Toledo Coal Co., 25 Ore. 426, 431.

98 Ontario Natural Gas Co. v. Gosfield, 18 Ont. App. 626, 631.

99 Coleman v. Coleman, 1 Pearson (Pa.) 470, 475; Rosse v. Wainman, 15 L. J. Exch. 67, 72, 14 M. & W. 859.

1 Ruttledge v. Kress, 17 Pa. Super. Ct. 490, 495.

which it is taken. Mere improvements could not, by any proper process of construction, be brought within the meaning of "quarrying."

"Quarrying" includes the doing of any work necessary to the proper and convenient use of the pit, such as the removal of earth, debris, water, ice or snow.[2]

§ 81. "Explosive materials"—"injurious gases," etc. —construed. This language, by the terms of the statute, is only to apply to those enterprises in which they are used "in dangerous quantities." Whether an employer was so using them, would undoubtedly be a question of fact, to be determined in each individual case. When so used, and accident results to a workman by reason thereof, while he is engaged in the line of his duty, compensation would be payable.

A partnership engaged in the business of selling and delivering gasoline, throughout the county, from a central station, is held to be engaged in an extra-hazardous business within the meaning of this section.[3] And using dynamite in blowing up stumps, in constructing a dirt road is held to be using explosive materials in dangerous quantities.[4] But the use of small quantities of such materials, incidental to work which is not an extra-hazardous enterprise or business, does not bring such work within the terms of the classification. For example, it is held that the use of explosive materials, and chemicals, in the laboratories of a university, for use in the training of students, does not make the university subject to the Act, as engaged in an "enterprise in which explosive materials are * * * used in dangerous quantities."[5]

§ 82. "Enterprises in which statutory or municipal ordinance regulations are now or shall hereafter be imposed,"—construed. It is the obvious purpose of this last clause of the section to bring within the classifica-

[2] Miller v. Chester Slate Co., 129 Pa. St. 81, 93.

[3] Gibson v. Industrial Board, 276 Ill. 73, 16 N. C. C. A. 636.

[4] McLaughlin v. Industrial Board, 281 Ill. 100, 16 N. C. C. A. 677, 682.

[5] North, Admr., v. Board of Trustees of U. of Ill., 201 Ill. App. 70, 11 N. C. C. A. 80.

tion, all those industries in the State with reference to which general safety regulations have been passed, either by the state legislature or by local municipal legislative bodies. The legislative reason for this general classification must be that the legislative bodies which have enacted such safety laws or ordinances, have done so because they considered the industries to which they were directed, to be dangerous to the life and health of the employees therein;—and it is the purpose of the legislature, both expressly and by implication, to include within the terms of the compensation act, all such industries in the state. While it is of course true that the legislature cannot make a business dangerous by calling it so, and while it will not be permitted to drag into such a classification of dangerous trades those which are clearly not dangerous, on a purely false and arbitrary basis, yet the courts would not be warranted in disturbing the classification, if it appeared to be reasonable and practicable. This is a matter largely within the legislative discretion, with "reasonableness" practically the sole guide.[6]

The Act does not undertake to define or describe every business that it classifies as extra-hazardous, but it is the intention of the Act that no business shall be held to be extra-hazardous unless it is in fact extra-hazardous, *per se,* or is rendered extra-hazardous when conducted under conditions and surroundings named in the statute.[7]

Again, this Subdivision 8, of the Section 3 relates to "enterprises" in which statutory or municipal ordinance regulations are imposed, and the Supreme Court of Illinois in discussing what is meant by "enterprise" has said: "An enterprise is 'an undertaking of hazard; an arduous attempt.' (15 Cyc. 1053 and cited cases.) Lexicographers define an enterprise as 'an undertaking; something projected and attempted; an attempt or project, particularly an undertaking of some importance or one requiring boldness, energy or per-

[6] See *ante,* § 67.

[7] Hahnemann Hospital v. Industrial Board, 282 Ill. 316, 16 N. C. C. A. 666, 681, 746.

servance; an arduous or hazardous attempt, as, a warlike enterprise.'"[8] It is clear that the legislature did not intend to include work which is not extra-hazardous or even hazardous.[9]

In the present state of the law, this Subdivision 8, in addition to the industries specifically mentioned in the classification, would seem to bring within its purview, a large number of trades with reference to which the state legislature has already enacted safety acts of various kinds. It should here again be borne in mind, however, that the declared purpose of Section 3 of the compensation act, is to include "extra-hazardous" industries, in which the employees are subjected to the danger of "accidental injuries." No other industries are contemplated by this section, and no other injuries are to be compensated under the Act. In the process of inclusion therefore called for by the provisions of Subdivision 8 of Section 3, it would seem that only such industries should be included as now have or shall hereafter have imposed by statute or municipal ordinance of some kind, "regulations * * * for the protection and safeguarding of the employees or the public therein" from the dangers of accidental injury, such as are contemplated by the Workmen's Compensation Act.[10] For example, persons or corporations conducting a business which is subject to the regulations imposed by the occupational disease law[11] should not be considered as included by reason of the provisions of Subdivision 8, although the regulations of that law are, of course, intended "for the protection and safeguarding of the employees * * * therein." It is protection and safeguarding from occupational disease, however, and not from "accidental injuries," and it is for "accidental injuries" alone that the compensation law affords relief. It would be absurd to assume that in a

[8] Uphoff v. Industrial Board, 271 Ill. 312, 13 N. C. C. A. 80.

[9] *Ibid.*

[10] City of Rock Island v. Industrial Commission, 287 Ill. 76.

[11] Hurd's Rev. Stat., Chap. 48, § 153.

statute expressly limited by the legislature to compensation for "accidental injuries," occupational diseases were intended to be dragged in by the provisions of a subsequent section. The "safeguarding" referred to, is obviously safeguarding from accidental injuries in industries considered dangerous because of the probability of frequent injuries of an accidental character, and which industries, for this reason, have been subjected to statutory or municipal regulation, designed to prevent such injuries. In the occupational disease law, disease is sought to be prevented, not accidents; and the former are not compensable under the compensation law.[12] Applying this rule of construction, a number of the acts of the legislature of this state, designed in whole or in part for the "safeguarding of the employees or the public therein," would not be included within the classification of Section 3; and in considering various local municipal ordinances or regulations, the same rule should be applied.

§ 83. Statutes included by Paragraph 8 of Section 3. Employers and employees subject to the regulations imposed by the following statutes would therefore seem to be included within the terms of the classification of Section 3, and subject to the Act, unless they file notices of declination as provided in Sections 1 and 2, to-wit:

1. The Health, Safety and Comfort Act.[13]
2. The Building Construction Act.[14]
3. The Blower Act.[15]
4. The Fire Escape Act.[16]

In addition to these industries, mines and railroads are expressly included in the classification by the provisions of Subdivisions 5 and 3 respectively. In the absence of such express inclusion, they would be brought in by virtue of the provisions of Subdivision 8.

12 See *ante*, §§ 26-29.

13 Hurd's Rev. Stat., Chap. 48, § 89.

14 Hurd's Rev. Stat., Chap. 48, § 79.

15 Hurd's Rev. Stat., Chap. 48, § 43.

16 Hurd's Rev. Stat., Chap. 55a, § 1.

An Act of 1869 of the Illinois legislature[17] requires persons owning or running threshing machines, corn shellers "or any other machine which is connected to a horse power by means of tumbling rods or line shafting," to box such rods and shafting, and the "knuckles, joints and jacks thereof," but this statute is for all practical purposes obsolete and ineffective, because of its operation being limited to such machines as are run by horse power.

§ 84. (1.) The Health, Safety and Comfort Act,[18] applies, generally speaking, to "factories, mercantile establishments, mills and workshops;" and, as these industries are defined in the statute, they should be considered included in the hazardous classification of Sec. 3. The following definitions are given in the Act:

"The term 'factory' means any premises wherein electricity, steam, water or other mechanical power is used to move or work any machinery employed in preparing, manufacturing or finishing, or any process incident to the manufacturing of any article, or part of any article; or the altering, repairing, ornamenting, or the adapting for sale of any article."

It was held in Kansas, where the Compensation Act provides that it shall apply only to employment in the course of the employer's trade or business, on, in or about the factory, etc., of the employer, that an injury to a truck driver delivering meat is not within the danger zone created by the peculiar hazards of the employer's business.[19]

The following further definitions are given in the Act referred to:

"The term 'mill or workshop' shall include any premises, room or apartment, not being a factory as above defined, wherein any labor is exercised by way of trade or for the purpose of gain in or incidental to any process

[17] Hurd's Rev. Stat., Chap. 70, § 3.

[18] Hurd's Rev. Stat., Chap. 48, § 89; People v. Federal Security Co., 255 Ill. 561.

[19] Hicks v. Swift & Co., 168 Pac. (Kas.) 905, 15 N. C. C. A. 919. See also Meuker v. Hauver, 160 Pac. (Kas.) 1017, 16 N. C. C. A. 692.

of making, altering, preparing, cleaning, repairing, ornamenting, finishing or adapting for sale any article or part of any article, and to which or over which building, premises, room or apartment, the employer of the person employed or working therein has the right of access or control: Provided, however, that a private house or private room in which manual or other labor is performed by a family dwelling therein, or by any of them for the exclusive use of the members of such family is not a factory, mill or workshop within this definition."

"The term 'mercantile establishment' shall include all concerns or places where goods, wares or merchandise are purchased or sold, either at wholesale or retail."[20]

Most of the provisions of this very comprehensive statute, have specific reference to the prevention of "accidental injuries" to employees by reason of dangerous machinery and places of employment, and it therefore seems clear that any industry affected by this statute, and within the definitions above quoted would, by operation of the provisions of Subdivision 8, be included in the hazardous classification of the compensation law.

It is held, for example, that a retail grocery and butcher shop, in a one story building having no elevator or power driven machinery, is not within the Act, even though there is an ordinance requiring a license to keep a butcher shop, because it is only statutes and ordinances providing for the safety of employees and the public which operate to bring the employment under the Act.[21]

It was likewise held in New York that a butcher, running meat through a grinding machine, was not employed "in the manufacture or preparation of meats," under the New York statute.[22]

But under the Wisconsin Act, which covers all employments and which is not limited to a specified sched-

[20] Hurd's Rev. Stat., Chap. 48, § 89 (117).

[21] Dietrich v. Industrial Board, 286 Ill. 50. See also: Bowman Dairy Co. v. Industrial Commission, 292 Ill. 284.

[22] Pietha v. Murdter, 174 App. Div. 764, 16 N. C. C. A. 640.

ule of hazardous trades, it was held that the grinding of meat in a restaurant was an employment within the Act.[23]

Under the hazardous classification of the Illinois Act, any employment where there is power driven machinery, or other equipment, which makes the employer subject to safety laws and ordinances, the employment is within the Act. For example, it has been held that the business of conducting a junk yard was hazardous within the classification of Section 3, the court saying: "The mere receiving or buying of junk of a certain character might not be extra-hazardous, but that was not the whole of plaintiff in error's business. The evidence shows that they were operating a junk yard,—that is, they were collecting, sorting and preparing junk and metals for market; and that in this work they were sometimes required to use shears driven by electric motor and acetylene torch. There can be no question that the preparation of this junk for sale was a necessary part of the business and that the work was of such a nature as to bring it within the rule of the extra-hazardous in fact."[24]

§ 84a. (2.) The Building Construction Act[25] provides "for the protection and safety of persons in and about the construction, repairing, *alteration or removal* of buildings, bridges, viaducts and other structures." The "building * * * of structures" and "construction * * * work" is specifically covered by the terms of Subdivisions 1 and 2, respectively, of Section 3 of the Act, but the Building Construction Act would seem to extend the classification of the Compensation Act to all those industries, and the employers and employees engaged therein, in which the business of *"alteration or removal"* of buildings or other structures is carried on. The word "repairing" (Subdivision 1) has been held not to include "alteration,"[26] but

[23] Brenner v. Heruben, 176 N. W. (Wis.) 228.

[24] Cinofsky v. Industrial Commission, 290 Ill. 521.

[25] Hurd's Rev. Stat., Chap. 48, § 79.

[26] Douglas v. Com., 2 Rawle (Pa.), 262, 264.

the word "construction" (Subdivision 2) would probably include it.[27] But the word "removal" could not be construed as included within the definition of either "repairing" or "construction," so that to this extent the classification of the compensation law is broadened by reference to the Building Construction Act. The business of moving buildings is therefore within the classification of the Act.

§ 85. (3.) The Blower Act is entitled "An act to compel the using of blowers upon metal polishing machinery."[28] While perhaps the primary purpose of this statute is to prevent dust diseases, certainly one of its important objects is to prevent accidents arising in the course of the employment, from foreign particles being thrown against the person of the workman, during the operation of the metal polishing machinery to which the Act relates. It would therefore seem that this industry is covered by the classification of the Compensation Act, by virtue of the provisions of Subdivision 8 of Section 3.

§ 86. (4.) The Fire Escape Act.[29] This act requires fire escapes of a specified design, on all buildings four or more stories in height. It is believed that this Act would not operate to bring within the classification of the Compensation Act, any employers except those engaged in the "occupation, enterprise or business," of operating or conducting a building to which the regulations of the Fire Escape Act are applicable. The compensation law was obviously not intended to apply to mere owners of buildings or to lessees thereof, and unless there is conducted in the building some industry covered by the classification of Section 3 of the Act, or unless the building is subject to the provisions of the fire escape law and is being conducted by the employer (either as owner or lessee) as an "occupation, enterprise or business" it could not be properly included

[27] Hancock's Appeal, 115 Pa. St. 1.

[28] Hurd's Rev. Stat., Chap. 48, § 43.

[29] Hurd's Rev. Stat., Chap. 55a, § 1.

within the classification of hazardous enterprises, to which alone the provisions of Section 3 are applicable.

§ 87. Statutes not included, by Subdivision 8 of Section 3. Applying the rule which we have adopted [30] for the construction of Subdivision 8 of Section 3 of the Act, employers and employees subject to the regulations imposed by the following statutes would not seem to be included within the terms of the classification of Section 3,[30a] although these statutes were, in some respects, enacted "for the protection and safeguarding of the employees or the public therein," to-wit:

1. The Child Labor Act.[31]
2. The Sweat-shop Act.[32]
3. The Butterine and Ice Cream Act.[33]
4. The women's ten-hour law.[34]
5. The occupational disease law.[35]
6. Federal Safety Acts.

§ 88. (1.) The Child Labor Act. This act could not well be held to be included, because the only reference to dangerous employments in the Act, is that embraced in the provisions of Section 11, which *prohibits* the employment of children under the age of sixteen in employments "that may be considered dangerous." Assuming that this statutory prohibition is observed, there would be no employment relation to which the Compensation Act might apply. It is not fair to assume that the legislature had in mind a supposed class of employers who would make it a business to persistently violate this section of the child labor law, and employ children in dangerous trades,—and clearly, casual, individual instances of such violation, would not bring the employment within the hazardous classification of the Compensation Act.

[30] *Ante*, § 82.

[30a] Dietrich v. Industrial Board, 286 Ill. 50.

[31] Hurd's Rev. Stat., Chap. 48, § 20.

[32] Hurd's Rev. Stat., Chap. 48, § 21.

[33] Hurd's Rev. Stat., Chap. 48, § 68.

[34] Hurd's Rev. Stat., Chap. 48, § 121.

[35] Hurd's Rev. Stat., Chap. 48, § 153.

§ 89. (2.) The Sweat-shop Act. This act provides that workshops where clothing is manufactured "shall be kept in a cleanly state," and "shall be subject to inspection and examination, as hereinafter provided, for the purpose of ascertaining whether said articles * * * are in a cleanly condition, and free from vermin and any matter of an infectious or contagious nature," and jurisdiction is given to the Board of Health and the State Factory Inspector to take summary action, in case they find evidence of infectious or contagious diseases. It will therefore be seen that while the Act is designed to protect the employees and the public, it is protection against disease rather than accidental injuries, which injuries alone, are within the contemplation of the compensation law.

§ 90. (3.) The Butterine and Ice Cream Act. This Act requires certain sanitary precautions to be observed, by those engaged in the butterine and ice cream business, for the protection of the public, but its provisions have no reference whatever to the prevention of accidents, and it clearly is not included in that class of enterprises which are brought within the purview of the Compensation Act by virtue of the provisions of Subdivision 8 of Section 3.

§ 91. (4.) The women's ten-hour law. This act limits the number of hours of labor for women in certain industries named, to ten per day. It is obviously intended to protect women workers in the industries named, from fatigue and the ill effects thereof. While in this respect it is for "the protection and safeguarding of employees," the Act has no reference whatever to accidental injuries, and therefore cannot be considered as included in the hazardous classification of the compensation law, by virtue of the provisions of Subdivision 8.

§ 92. (5.) The occupational disease law. We have elsewhere discussed at some length the differences between disease and accident as the latter has been defined by the courts.[36] As there stated an occupational disease

[36] *Ante*, §§ 26-29.

which is directly caused by accident would be covered by the provisions of the compensation law, if it in fact follows as a result of the injury. For example it was held that where a fireman for a zinc smelting plant whose duties were to draw the scum from the moulten zinc which contained arsenic giving off fumes or gases becomes sick and dies after a few days' illness, with symptoms of arsenical poisoning, and the defense was made that the death was a result of an occupational disease, an award for compensation was sustained, the court holding that while the employee had been exposed to practically the same conditions for many years without injury, it was unreasonable to conclude that his immunity was due to a state of his health and his ability to resist the deleterious effect of the gases and fumes, but at the time of his injury his physical condition was such as to make him susceptible to arsenical poisoning to any such a degree as to bring on his fatal illness, and that inasmuch as the illness or injury was traceable to a definite time, place and cause, it might fairly be said to be accidental within the meaning of the Act.[37]

But the evident purpose of the occupational disease law is to protect workmen against the dangers of occupational and industrial diseases properly so-called, and not the dangers of accidents, and it would therefore seem clear that occupational diseases generally are not brought within the terms of the law by the reference to safety statutes in Subdivision 8 of Section 3.[38]

An occupational disease has been defined as a diseased condition which arises gradually from the character of the work in which the employee is engaged.[39]

The occupational disease law gives a right of action to a person who suffers from an occupational disease by reason of the failure of his employer to comply with

[37] Matthiessen & Hegeler Zinc Co. v. Industrial Board, 284 Ill. 378, 17 N. C. C. A. 342, 788.

[38] See *contra:* Hood & Sons v. Maryland Casualty Co., 206 Mass. 223; Johnson v. London G. & A., 104 N. E. (Mass.) 735, 4 N. C. C. A. 843, under a statute covering "Personal Injuries." See also: In re Maggelte, 116 N. E. (Mass.) 972, 15 N. C. C. A. 520.

[39] Jerner v. Imperial Furniture Co., 166 N. W. (Mich.) 943, 17 N. C. C. A. 344.

that Act, but that Act is not in conflict with the Workmen's Compensation Act, nor is an employee given an election of remedies as his remedy must be under the compensation law if he is injured accidentally, and under the Occupational Disease Act if he is injured in health because of a failure to comply with its provisions.[40]

§ 93. (6.) Federal safety acts. The language of subdivision 8 is "any enterprise in which *statutory*" regulations are imposed. The question arises whether the legislature intended to refer to Federal statutory regulations as well as state statutory regulations.

The workmen's compensation law establishes the policy of the State of Illinois, with reference to the adjustment of personal injury claims, arising in the industries of the state. What the policy of the Federal Government has been or may be, or what the policy of other states is or may be, is a matter of no consequence in determining what the policy of Illinois is, as declared in its Workmen's Compensation Law. The United States Government is a separate and distinct sovereignty, with a policy of its own with reference to the hazards of industry, and the methods of settlement of injury claims of workmen engaged in such industries. Furthermore, in its own peculiar field the Congress is supreme in the matter of legislation. Under the commerce clause of the Federal Constitution, Congress has exclusive jurisdiction over interstate commerce, and those engaged therein, and it is only in pursuance of this constitutional authority that Congress has passed such safety laws as have thus far been enacted, i. e., the Inter-State Commerce Act, the Safety Appliance Act, the Pure Food Act, etc. Some regulations of minor importance it is usual to leave exclusively to the states. By refraining from action, Congress in effect adopts as its own regulations those which the common law, or those which the state, in the regulation of its domestic concerns, have

[40] Lavanoski v. The Hoyt Metal Co., 292 Ill. 218.

established, affecting commerce, but not regulating it, within the meaning of the Constitution. In those instances in which Congress has acted, the laws passed are supreme, and the state has no power to amend or supersede such legislation.[41] The language of Subdivision 8 of Section 3 of the Act, refers, of course, to statutes which have been enacted. The Federal Employers' Liability Law, as to any interstate employee, or any employee engaged in working on any instrumentality of interstate commerce would exclude the operation of a state compensation law.[42]

In view of these considerations, it would seem that Subdivision 8 of Section 3 of the Act should not be construed as having any application to Federal laws passed or to be passed. If the statutes of other sovereign legislative bodies were intended to be included, it would be difficult to say where the line should be drawn. It is believed that the legislature in referring to other statutes, had in mind its own state policy, with reference to hazardous industries and the injuries to workmen occurring therein, and that it intended to include within the classification of the compensation law those industries which it had, by its own prior legislation, declared expressly or by implication, to be hazardous in character.

§ 94. Municipal ordinance regulations. It is, of course, impossible to set down with accuracy, those industries which are or are not brought within the classification of the compensation law, by reason of the reference in Subdivision 8 of Section 3, of the Act, to municipal ordinance regulations, because this would necessitate a reference to all the various municipal regulations of the many different municipalities of the state.

Most common among the municipal regulations of the state for the "protection and safeguarding of employees or the public," however, may be mentioned those requiring fire escapes and regulating the use and operation of elevators. As elsewhere stated[43] we do not believe that

41 Cooley's Const. Lim., Chap. IV.
42 See *post*, Chap. VI, § 117.
43 *Ante*, § 72.

such municipal regulations would operate to bring within the classification of the compensation law, any employers except those engaged in the "occupation, enterprise or business" of conducting or operating a building to which such municipal regulations were applicable. The compensation law was not intended to apply to mere owners or lessees of buildings, unless such owners or lessees are operating such buildings, as a distinct business enterprise, or unless they are conducting in such buildings, some industry specifically covered by the classification of Section 3. For example, the operation of a large office building, would clearly seem to be the carrying on of an enterprise, within the meaning of Subdivision 8, and as such an enterprise is subject to municipal ordinance regulations relating to fire escapes and the operation of elevators, it would be brought within the hazardous classification of Section 3, whereas, the conduct of a business, not otherwise specifically included in the hazardous classification, on one floor or in a comparatively small portion of such a building, would not bring the employer therein, within the scope of the classification of the compensation law.[44]

It has been held that a seven-story building conducted as a hospital was an extra-hazardous enterprise within the language of Subdivision 8 that any enterprise subject to municipal ordinances or regulations for the protection and safeguarding of employees, or the public therein should be deemed to be extra-hazardous.[45]

Ordinances which have no reference to the safeguarding of employees in such places of employment, however, do not operate to bring industries subject to them within the terms of the law. For example, speed and traffic ordinances are not such municipal regulations as are within the contemplation of Subdivision 8 of Section

[44] But see: Newark Hair & Bi-Products Co. v. Feldman, 99 Atl. (N. J.) 602, 15 N. C. C. A. 215, where an office stenographer employed on the fourth floor which alone was occupied by her employer in the business of preparing animal hair for market was held entitled to compensation where she was compelled to jump three floors to the ground to escape from a fire.

[45] Hahnemann Hospital v. Industrial Board, 282 Ill. 316, 16 N. C. C. A. 666, 681, 746.

3, it being held that the statutory or municipal ordinances referred to therein must be such laws or ordinances as are enacted or imposed with reference to the employment and for the safety of the persons engaged therein.[46]

§ 95. What employees in hazardous industries are covered. It would seem to be clearly established, by the weight of authority, that if an industry is covered by the terms of a compulsory compensation law, based upon a hazardous classification, it is covered as to all the employees therein, regardless of whether they are all actually exposed to the peculiar hazards of the business.

In a recent case[47] the Supreme Court of the United States had under consideration, an Act of the State of Mississippi, which substantially abrogated the common law fellow servant rule as to "every employee of a railroad corporation." The court, by Mr. Justice Lurton, said:

"It is urged that this legislation, applicable only to employees of a railroad company, is arbitrary, and a denial of the equal protection of law, unless it be limited in its effect to employees imperiled by the hazardous business of operating railroad trains or engines. * * * It is now contended that the provision has been construed in the present case as applicable to an employee not subject to any danger or peril peculiar to the operation of railway trains, and that therefore the reason for such special classification fails, and the provision so construed and applied is invalid as a denial of the equal protection of the law.

"This contention, shortly stated, comes to this, that although a classification of railway employees may be justified from general considerations based upon the hazardous character of the occupation, such classification becomes arbitrary and a denial of the equal protection of the law, the moment it is found to embrace em-

[46] City of Rock Island v. Industrial Commission, 287 Ill. 76.

[47] Mobile, Jackson & Kansas City R. Co. v. Turnipseed, Admr., 219 U. S. 35, 2 N. C. C. A. 243.

ployees not exposed to hazards peculiar to railway operation.

"But this court has never so construed the limitation imposed by the Fourteenth Amendment upon the power of the State to legislate with reference to particular employments as to render ineffectual a general classification resting upon obvious principles of public policy because it may happen that the classification includes persons not subject to a uniform degree of danger. The insistence, therefore, that legislation in respect of railway employees generally is repugnant to the clause of the Constitution guaranteeing the equal protection of the law merely because it is not limited to those engaged in the actual operation of trains, is without merit."[48]

While this declaration of the court is to the effect only that the legislature has the *power,* to make a general classification which may include those not exposed to the peculiar hazards of the business, the decision holds that the particular employee in the case, who was not exposed to the peculiar hazards of railway operation, was entitled to the benefits of the Act, and that his employer was, as to him, governed by it.[49]

In a case decided by the Supreme Court of Illinois, involving the constitutionality of the amended women's ten-hour law,[50] the same question was presented. The amended Act covered some thirteen different classes of industries, and it was claimed in this particular case, which involved the employment of certain females in a hotel, that the evidence showed that the work in the particular hotel and the work of the particular female employees was not injurious to such employees, and in disposing of this objection the court said:

"It is contended the facts in the record before us show that the plaintiff in error's female employees are not over-worked; that the character and amount of labor performed by them could not injure their health, and

[48] *Ibid,* 40, 41.

[49] See also, L. & N. Railroad Co. v. Melton, 218 U. S. 36.

[50] Hurd's Rev. Stat., Chap. 48, § 121.

that the facts in this record show that there is no reasonable connection between the limitation of the hours of work and the health of the female employees named in the information. There are probably instances where employment for a longer period than ten hours per day in a hotel, does not result in any ill-effects, but we cannot determine the question here involved from a consideration of a particular instance. The law must be considered in its general application to all cases and conditions existing throughout the state. It must be considered from its application to all employers and employees, and not to an individual employer or employee. If a law of this character must be considered with reference to the particular circumstances and conditions existing in each hotel, it might lead to the absurdity of its being valid in one case and invalid in another. The law is general in its application, embracing all hotels, and is valid as to all or none. That there may be hotels where the labor required of females is so light that more than ten hours' employment would not so tax their powers of physical endurance as to injuriously affect their health, affords no justification for holding the law invalid." [51]

The Illinois Workmen's Compensation Act, in its present compulsory form, is based squarely upon the sovereign police power of the State in exactly the same manner as the woman's ten hour law above discussed.[52]

It was the doctrine of the Illinois Supreme Court under the Elective Act that the business of the employer, and also the particular occupation of the workman at the time of the accident, must be extra-hazardous in order to entitle such workman to compensation; [53]

[51] People v. Elerding, 254 Ill. 579, 587; see also, Ditberner v. Railway Co., 47 Wis. 138; Meng v. Coffey, 67 Nebr. 500; Railway Co. v. Castle, 172 Fed. 841; Pierce v. VanDusen, 78 Fed. 693; Hancock v. Railway Co., 124 N. C. 222; Thompson v. Bank. Co., 54 Ga., 509, and *contra:* Lavelle v. Railway Co., 40 Minn. 249; Deppe v. Railway Co., 36 Ia. 52.

[52] Grand Trunk Western R. R. Co. v. Industrial Commission, 291 Ill. 167.

[53] Sanitary District v. Industrial Board, 282 Ill. 182; Marshall v. City of Pekin, 276 Ill. 187, 192; Keeran v. P. B. & C. Traction Co., 277 Ill. 413; Vaughn's Seed Store v. Simonini, 275 Ill. 477; Uphoff v. Industrial Board, 271 Ill. 312, 13 N. C. C. A. 80.

and that the nature of the employment and the occupation of the employee at the time of his injury are both to be considered in determining whether or not the parties are under the Act.[54]

This was apparently the doctrine of the New York courts prior to an amendment of the New York Act in 1916 extending the Act to employments "away from the plant" of the employer. But since the amendment referred to, it is held that all employees engaged in the employment of an employer engaged in a hazardous business is entitled to compensation, even though the employee himself is not actually exposed to the hazards of the business.[55]

It has been held in New York, however, that a chauffeur, while employed in driving the employer's personal family automobile, was not within the protection of the Act, although at other times he drove a truck for the employer in a hazardous occupation.[56]

It is held in New Jersey that the workmen are entitled to the benefits of the Act if they may be at any time brought into close proximity to the hazards of the business conducted by the employer, although at the time of the accident they may not be in such proximity.[57]

Under the doctrine of the Illinois courts it is necessary to determine in each case, according to the particular facts of each case, whether the employee is engaged in a line of employment which entitles him to compensation, regardless of the fact that his employer may be exclusively engaged in conducting a hazardous industry.[58]

[54] Seggebruch v. Industrial Commission, 288 Ill. 163.

[55] Dose v. Moehle Litho. Co., 221 N. Y. 401, 16 N. C. C. A. 633; Mandel v. Steinhardt, 173 App. Div. 515; Brown v. Richmond L. & R. Co., 173 App. Div. 433; Lyon v. Windsor, 173 App. Div. 377; Oberg v. MacRoberts, 161 N. Y. Supp. 934; Fogerty v. National Biscuit Co., 161 N. Y. Supp. 937; Pietha v. Murdter, 174 App. Div. 764.

[56] Wincheski v. Morris, 166 N. Y. Supp. 873, 16 N. C. C. A. 680.

[57] Newark Hair & Bi-Products Co. v. Feldman, 99 Atl. (N. J.) 312; Morin v. Nashua Mfg. Co., 103 Atl. (N. J.) 312. See also Foreman v. Industrial Accident Commission, 160 Pac. (Cal.) 857.

[58] Chicago Dry Kiln Co. v. Industrial Board. 276 Ill. 556, 14 N. C. C. A. 139, 240.

In the *Vaughn* case,[59] the employer was engaged in the business of conducting a greenhouse, storehouse and elevator, and the general nursery and seed business. The Supreme Court of Illinois held that a teamster injured by a kick of a horse while attending the horses in a stable on the farm conducted by the employer in connection with the nursery business, for the growth of nursery products, was not engaged in a hazardous enterprise, and the fact that the employer might be subject to the law because of his maintaining and using the greenhouse, storehouse and elevator, did not change the rule. The court says: "Assuming but not deciding or intimating, that maintaining the greenhouse, storehouse and elevator was engaging in an extra-hazardous business, we shall consider the latter proposition only. Whether the provisions of the Workmen's Compensation Act applied to all the business of the employer, without reference to its connection with the particular extra-hazardous business. The authority to elect given by the first section of the Act extends to every employer in the State. This section refers to the person and not to the business, and the election by the employer subjects him to the Act together with all his employees. The third section refers primarily to the business and not to the person of the employer. Its provisions expressly apply only to employers engaged in the specified extra-hazardous occupations, and provide that in any action to recover damages against such an employer it shall not be a defense that the employee assumed the risk or that the injury was caused by the negligence of a fellow servant or by the contributory negligence of the employee. These provisions cannot be extended to apply to causes of action not having any connection with the extra-hazardous occupations mentioned. If a man who was engaged in the business of a building contractor in Chicago and who had elected not to provide and pay compensation according to the provisions of the Act should also be conducting a dry goods store

[59] 275 Ill. 477, 14 N. C. C. A. 1075.

in Rockford, and should be sued by a clerk in the store for an injury caused by the negligent arrangement of the stock of goods, the contributory negligence of the clerk, his assumption of the risk or the negligence of a fellow servant causing the injury would constitute a defense, for this would not be an action against an employer engaged in a hazardous occupation."[60] The illustration employed by the court is of a man engaged in carrying on two distinct lines of business, one hazardous and the other not, whereas the case before the court involved one business only, the general nursery business, which the court assumed was extra-hazardous, and yet held that an employee injured in work incidental to such nursery business was not entitled to compensation because not exposed to the hazards of the business.

Under the present compulsory law, which is based squarely upon the police power, and does not depend in any way upon the election of the employer, if the employer's business falls within the hazardous classification, under the principles of police power referred to in the *Elerding* case,[61] all employees in that business should be entitled to the protection of the Act, and such an application of the Act would not be an unconstitutional discrimination as between employers, such as might be said to result in the case of an elective law, where the common law defenses were removed as to employers rejecting the Act.[62]

The practical difficulty of administering the law on any other principle than that it applies to every employee of an employer engaged in an extra-hazardous enterprise is evident, and is well illustrated by the difficulty of reconciling the decisions of the Supreme Court of Illinois involving the question as to whether the em-

[60] *Ibid.*

[61] 254 Ill. 579, 587.

[62] See: Oriental Laundry Co. v. Industrial Com., 293 Ill. — (June, 1920), and see also reasoning of the court based upon elective features of the Act in Vaughn's Seed Store v. Simonini, 275 Ill. 477, at p. 482, and see Mobile Jackson & K. C. R. Co. v. Turnipseed, Admr., 219 U. S. 35, 2 N. C. C. A. 243.

ployee in each case was or was not exposed, at the time of the accident, to the hazards of the business.[63]

It is the practice of some insurance companies to issue policies covering only those employees who are exposed to hazard, and not including the clerical or office force. As a matter of private contract between the insurance company and the employer, this is of course permissible, because manifestly an insurance company can carry part or all of a given risk, as it sees fit. As the obvious purpose of the compensation law, however, is to assure to the injured workmen compensation in accordance with the terms of the Act, the Industrial Board clearly has the power to require the employer to adequately cover all his risks and insure payment of compensation to injured employees, in some of the several methods prescribed by Section 26 of the Act.[64]

§ 96. Farming excluded. By the proviso of subdivision 8 of Section 3, farmers and farming work of all kinds is expressly excluded from the operation of the Act, in the following language:

"Nothing contained herein shall be construed to apply to any work, employment or operations done, had or conducted by farmers and others engaged in farming, tillage of the soil, or stock raising, or to those who rent, demise or lease land for any such purposes, or to any one in their employ or to any work done on a farm, or country place, no matter what kind of work or service is being done or rendered."

Subdivisions 1, 2 and 3 of Section 3 also expressly exclude from the enterprises mentioned in said subdivisions all farming operations as defined in Subdivision 8.

In the absence of this express exception, it would seem that farming laborers engaged in general farming

[63] See: Gibson v. Industrial Board, 276 Ill. 73, 16 N. C. C. A. 636; Bowman Dairy Co. v. Industrial Commission, 292 Ill. 284; Vaughn's Seed Store v. Simonini, 275 Ill. 477, 14 N. C. C. A. 1075; Suburban Ice Co. v. Industrial Board, 274 Ill. 630, 14 N. C. C. A. 132, 777, 1080.

[64] See *post*, Chap. XIX; also Adams v. N. Y. O. & W. Ry. Co., 114 N. E. (N. Y.) 1046.

would not be covered by the Act unless the farmer employer affirmatively elected to accept it under the provisions of Section 1, because the business of general farming would not seem to fall within any one of the classes of industries referred to in Section 3.[65] If engaged in construction or excavating work as an "enterprise or business," a man who was also a farmer would of course fall within the classification of the Act, but mere tilling of the soil, and work ordinarily incidental thereto are not covered by the hazardous classification. If an employee is engaged in farming and is also engaged by the employer to do other work which may be hazardous, the question as to whether he would be entitled to compensation for an injury would depend upon the character of the work he was doing at the time of the injury.[66] But it has been held that an employee who is injured while unloading and spreading manure over certain farming land of his employer is not engaged in an extra-hazardous occupation within the terms of Section 3, although at certain times of the year he is engaged in running his employer's grain elevator.[67] Again, cattle raising on a large scale with farming only as an incident, does not make an employee in such industry a "farm laborer."[68] But a farm laborer who incidentally helps harvest ice to be stored for use on the farm is engaged in farm labor.[69] An employee engaged to work on a threshing machine has been held not employed in farming within the terms of an exemption of agricultural employment.[70] On the other hand it has been held that one assisting another who is driving a caterpillar engine attached to a harrow is engaged in farm work, and not in the operation of "farm machinery," within the exceptions of an insur-

65 Uphoff v. Industrial Board, 271 Ill. 312, 13 N. C. C. A. 80.

66 George v. Industrial Accident Commission, 174 Pac. (Cal.) 653.

67 Seggebruch v. Industrial Commission, 288 Ill. 163.

68 C. C. Slaughter Co. v. Pastrana, 217 S. W. (Texas) 749.

69 Muller v. Little, 173 N. Y. Supp. 578.

70 In re Boyer, 117 N. E. (Ind. App.) 507, 16 N. C. C. A. 592.

ance policy excluding such operations.[71] And a workman operating a corn shredder for an employer under contract with the farmer to do such work was held to be a farm laborer under the Iowa Act, which contains a similar exclusion.[72] And in New York it was held that although logging was classed as a hazardous employment, the work of logging on a farm is farm labor, and therefore within the exception of the Act excluding farm labor.[73] It is held that incidental repair and construction work on a farm does not transform the farmer into a builder so as to subject him to the provisions of the compensation law.[74] Nor does a farmer become a bridge builder by building a bridge on his farm.[75] But it has been held that a ranchman who regularly employs six or seven carpenters on construction, improvement and repair of buildings, cannot claim the exemption as to such men under the statute where farming industry is specifically excepted from the Act.[76]

Accidents to farm hands attract but little attention. Few states, if any, require them to be reported. Yet agriculture is wholly, or on its mechanical side covered in important foreign compensation systems,[77] and there would seem to be no logical reason for excepting the farming industry here. On the basis of accident statistics it should be expressly included. In Germany agricultural laborers are insured under a separate statute.[78]

The Wisconsin Labor Bureau has made some inquiry into the accidents in agriculture, and reports for 1907, 293 accidents to farm hands and 684 to independent

71 Maryland Casualty Co. v. Industrial Accident Commission, 173 Pac. (Cal.) 993.

72 Slicord v. Horn, 162 N. W. (Iowa) 249, 15 N. C. C. A. 487.

73 Brockett v. Mietz, 171 N. Y. Supp. 412.

74 Uphoff v. Industrial Board, 271 Ill. 312, 13 N. C. C. A. 80; Coleman v. Bartholomew, 161 N. Y. Supp. 560, 175 App. Div. 122, 16 N. C. C. A. 601, 644; Kauri v. Messner et al., 164 N. E. (Mass.) 537, 17 N. C. C. A. 466; State v. Nelson, 176 N. W. (Minn.) 164.

75 National Accident Society v. Taylor, 42 Ill. App. 97.

76 Miller & Lux v. Industrial Accident Commission, 162 Pac. (Cal.) 651, 14 N. C. C. A. 1086, 15 N. C. C. A. 811.

77 Austria, Section 1; Hungary, Section 3; Italy, Sections 1-4.

78 Frankel & Dawson Workingmen's Insurance in Europe, 96-98.

farmers. This means that agricultural employments shows 977 casualties; ranking in respect to numbers next to railroad employments, with 1,305.[79]

It has been held, however, that the exemption of farm laborers does not violate the clause of the Constitution requiring equal protection of the law.[80]

§ 97. Employees on threshing machines. We have elsewhere referred[81] to an old statute requiring persons owning or running threshing machines, corn shellers, etc., "connected to horse power" to guard the shafting and other machinery. Farmers, as a rule, are not engaged in the business of threshing, and even if this statute should be construed to bring the business of threshing within the operation of the Compensation Act, by virtue of the provisions of Subdivision 8 of Section 3, under the rulings of the Court of Appeal of England, the farmer would not be held an "employer" required to pay compensation, where the threshing machine is let out on hire to the farmer, by the owner thereof. In a case which arose under the English Act, the respondents were owners of a threshing machine which was let out to farmers for a consideration. They were bound by statute to have three men to attend to the machine, two to look after the engine, and a third as "road man." At farms, the road man acted as assistant in the threshing, being paid by the farmer. While engaged in the threshing, the road man was injured, and claimed compensation from the owners of the threshing machine, and the defense was that the road man was the employee of the farmer. The court held that the road man was the employee of the owners of the threshing machine.[82]

In a Utah case it was held that where a number of farmers purchased a threshing machine for the purpose of threshing their own grain, and used it principally for that purpose, such primary purpose was con-

[79] Rep. Wisconsin Labor Bureau, 1908, 24.

[80] N. Y. Cent. R. R. Co. v. White, 243 U. S. 247.

[81] Chap. III, § 83.

[82] Reed v. Smith, Wilkinson & Co., (1910), 3 B. W. C. C. 223.

trolling, so that one employed to assist in threshing operations would be an agricultural laborer, even though the grain of others than the owners of the machine was threshed.[83] But in an Indiana case it was held that wheat threshing, as a business, was an industrial pursuit, in and of itself, and an employee working on a threshing machine engaged in such business, was not within the exemption of farm labor.[84]

[83] Jones v. Industrial Commission, 187 Pac. (Utah) 833. See also: State ex rel. John Bykle v. Dist. Court, 140 Minn. 398, 16 N. C. C. A. 596, and Slycord v. Horn, 162 N. W. (Iowa) 249, 16 N. C. C. A. 592.

[84] In re Boyer, 117 N. E. (Ind. App.) 507, 16 N. C. C. A. 592. See also White v. Loades, 164 N. Y. Supp. 1023, 16 N. C. C. A. 595, 673, and Vincent v. Taylor Bros., 180 App. Div. (N. Y.) 818, 16 N. C. C. A. 594; Reed v. Smith Wilkinson Co., (1910), 3 B. W. C. C. 223; Connolly v. Peoples G. L. & C. Co., 260 Ill. 162.

CHAPTER IV

WHO ARE EMPLOYERS?

Sec. 4 of the Illinois Act

§ 4. The term "employer" as used in this Act shall be construed to be:

First—The State, and each county, city, town, township, incorporated village, school district, body politic, or municipal corporation therein.

Second—Every person, firm, public or private corporation, including hospitals, public service, eleemosynary, religious or charitable, corporations or associations who has any person in service or under any contract for hire, express or implied, oral or written, and who is engaged in any of the enterprises or businesses enumerated in section three (3) of this Act, or who at or prior to the time of the accident to the employee for which compensation under this Act may be claimed, shall in the manner provided in this Act, have elected to become subject to the provisions of this Act, and who shall not, prior to such accident, have effected a withdrawal of such election in the manner provided in this Act. [Amended by Act approved June 25, 1917.

§ 98. Who are employers. The term "employer" is defined in the statute, itself, or at least those persons and corporations which the legislature intended to be included within the meaning of that term, are specifically

mentioned, so that there is not so much occasion for defining the term, with reference to its ordinary meaning, or the meaning given to it by the courts. In the usage of the language, the word has a well established meaning, but circumstances will arise, even under the description given in the statute of what shall be construed as included within the meaning of the term, which will make it more or less difficult to determine whether the legal relation of employment exists or not.

It has been said that the words "employer" and "employment" are not of the technical language of the law or of any science or pursuit, and must therefore be construed according to the context and the approved usage of the language.[1]

Accepting the term, therefore, in its ordinary signification, an employer is held to be "one who uses or engages the services of other persons for pay."[2]

The decisions under the elective law have held that one may be an employer under the law as to certain of his employees, and not an employer as to others who are not exposed to the hazards of the business.[3]

§ 99. Workmen loaned to other employers. In a leading case in the court of Appeal of England, the respondents were owners of a threshing machine which they let out on hire to farmers. They were bound by statute to have three men to attend the machine, two to look after the engine, and a third as "road man." At farms, the road man acted as assistant in the threshing, being paid by the farmer. While engaged in the threshing, the road man was injured, and claimed compensation from the owners of the threshing machine. The court held that they were employers, and bound to pay compensation.[4] This case would therefore seem to estab-

[1] State v. Foster, 37 Iowa 404, 407.

[2] Matter of Fitzgerald, 21 Misc. (N. Y.) 226, 229.

[3] Vaughn's Seed Store v. Simonini, 275 Ill. 477, 14 N. C. C. A. 1075; Hahnemann Hospital v. Industrial Commission, 282 Ill. 316, 16 N. C. C. A. 666, 681, 746; Bowman Dairy Co. v. Industrial Commission, 292 Ill. 284; see also: Kauri v. Messner et al., 164 N. W. (Mich.) 537, 17 N. C. C. A. 466.

[4] Reed v. Smith, Wilkinson & Co.,

lish the doctrine that the lending of a workman to another, even though the latter paid for the service rendered during the period the workman was loaned, would not relieve the regular employer of such workman from the obligation to pay compensation in case of injury. Workmen temporarily lent are expressly covered by the English Act, however.[5] This doctrine was recognized in a case in which compensation was denied, the circumstances being as follows: The deceased was a farm laborer, who was in the habit of working for different farmers at a certain wage per day, coming and going as he wished. He came to work for respondent at hay harvest in June, 1908, and worked for him until July 4 of that year, when he worked for another farmer for a week, after which he came back and worked for respondent till October 10, 1908, except on three days, at different times, when he absented himself without notice, getting no wages for the days when he was away. On the morning of October 12, 1908, the deceased came to respondent's house with another laborer of the same kind prepared to work, and was told by respondent's servants to go to a neighboring farmer, Andrews, who had sent a message to respondent asking him to lend him a man to help in threshing, to which the respondent had answered that the deceased could go. The deceased therefore went to Andrews, and while threshing, met with the accident which caused his death. The court held that the workman could not absent himself from work against his employer's wish, without a breach of contract of service, and that there was no subsisting contract of service between the deceased and respondent on the morning of October 12, 1908, and that therefore respondent was not liable for compensation.[6]

The Massachusetts court has said that, in determining whether the employee is a servant of his original master or the person to whom he has been furnished or loaned, the general test is whether the act to be done

(1910), 3 B. W. C. C. 223; see also, Connolly v. Peoples G. L. & C. Co., 260 Ill. 162.

[5] 6 Ed. VII, Chap. 58, § 13.

[6] Boswell v. Gilbert, (1909), 127 L. T. Newsp. 146, 2 B. W. C. C. 251.

is done in connection with business of which the person is in control as proprietor, so that he can at any time stop or continue the work and determine the way in which it shall be done, not merely with reference to the result to be reached but also with reference to the method of reaching the result.[7] In that state it was held that where a workman and team were let by the employer to the city and during the noon hour, while taking the horses to be fed, they ran away and fatally injured the employee, the employment relation was not severed and the injured man remained the employee of his employer and was not an employee of the city.[8]

In another case, a sub-contractor wrote to a general contractor, stating that it required a locomotive crane on a job of work which it was doing. The deceased was employed by the general contractor as engineer in charge of the locomotive crane and he was ordered by an employee of the sub-contractor to hoist an engine and while doing so was fatally injured. It was held that he had not ceased to be the employee of the general contractor and that he was not the employee of the sub-contractor.[9] It has been held, however, that an unauthorized exchange of jobs between two workmen will operate to take them out of their employment and deprive them of the right to compensation.[10]

In an Indiana case, a car inspector employed by one railroad was injured while crossing the tracks of another railroad company, while going to do some work for a third railroad company, with which latter company the workman's employer exchanged workmen as occasion required; and it was held that the injured workman might recover from his regular employer.[11]

§ 100. Disputed cases of employment. An employee on a boat was instructed to report at 5 o'clock, which

[7] Scribner's case, 120 N. E. (Mass.) 350.

[8] Pigeon v. Employers Liability Assurance Corporation, 102 N. E. (Mass.) 932, 4 N. C. C. A. 516.

[9] Emach's case, 123 N. E. (Mass.) 86; see also Modoc Co. v. Industrial Accident Commission, 163 Pac. (Cal.) 685, 15 N. C. C. A. 280.

[10] Sherer & Co. v. Industrial Accident Commission, 166 Pac. (Cal.) 318.

[11] In re Maroney, 118 N. E. (Ind. App.) 134, 15 N. C. C. A. 242.

he did, and upon being told that the boat would sail at 11 o'clock left the boat with permission of the employer and went ashore, and upon returning at 10 o'clock was injured by a fall on the employer's premises, it was held the employment began at 5 o'clock, and as the accident happened on the premises it was covered by the Act.[12]

One who is acting as the agent for another, and hires a man without disclosing his principal, may become liable to the employee for an accident within the terms of the compensation law.[13] But the mere signing of checks for the wages of an employee, does not make one an employer of the person receiving the checks.[13a]

In an Illinois case A and a companion went to Naperville from Chicago with letters addressed to B, a son of C; C met them and took them to his home, and on the following morning B said he did not want two men, and took the companion to his home, and A remained with C and worked under his orders. The court said that even if the evidence did show that A was originally hired by B, yet as he was directed by B to work for C and he obeyed the direction, he became the servant of C.[14] The registered owner of a steam tug chartered her to another. Under the charter-party, the owner was bound to provide and pay a crew of two men, including the deceased, and he alone had power to dismiss them. The possession, control and management of the vessel, under the charter-party, belonged to the person to whom it was chartered. It was held that the owner and not the charterer was deceased's employer, within the meaning of the Compensation Act.[15]

A workman was drowned while mooring a ship of the respondents'; he was paid by a stevedore, who worked for respondents and other firms. The respondents contended that he was employed by the stevedore and not

[12] Carter v. Rowe, 101 Atl. (Conn.) 491, 15 N. C. C. A. 258.

[13] Scott v. O. A. Hankinson & Co., 171 N. W. (Mich.) 489.

[13a] Lezala v. Industrial Commission, 175 N. W. (Mich.) 87.

[14] Smith v. Eichelberger, 175 Ill. App. 231 and cases cited.

[15] MacKinnon v. Miller, (1909), S. C. 373, 46 S. L. R. 299, 2 B. W. C. C. 64.

by them. The stevedore gave evidence that the money was paid through him merely for the convenience of the respondents, and the County Court held that the man was employed directly by the respondents, and not by the stevedore, and the Court of Appeal held that it was a question of fact, and that it would not interfere, as there was evidence to support the decision.[16]

The alleged employer, from whom compensation was claimed, was a charitable institution, which maintained a labor yard, and which, in return for work done therein by persons out of employment, gave such persons their board and lodging, and occasionally trifling sums of money. One of such persons having been injured while so engaged, and claiming compensation, it was held, that upon these facts alone, the applicant had not proved a contract of service between himself and the institution, which would create a relation of employer and workman.[17]

Certain shipping agents were acting as managers of a vessel lying in the harbor. They contracted with a firm of merchants to load and transport a cargo of coal. A squad of "trimmers" loaded the coal. By the harbor regulations, the trimmers were chosen by a person nominated by the harbor commissioners, who had power to dismiss the trimmers. The trimmers were under the direct control and superintendence of the shipping agents, who also paid them. The commissioners were under no responsibility for the conduct of the trimmers. The expenses of loading were deducted from the freight, the balance of which, less charges, was paid by the agents to the owners of the vessel. While loading coal, a trimmer was injured. He was held to be in the employment of the shipping agents, and entitled to compensation from them.[18]

A workman was employed as a "barrow man" by the consignee of a cargo, in the unloading of a ship. Other

[16] Pollard v. Goole & Hull Steam Towing Co., (1910), 3 B. W. C. C. 362.

[17] Burns v. Manchester & S. W. Mission, (1908), 99 L. T. 579, 1 B. W. C. C. 305.

[18] Gorman v. Gibson, (1910), S. C. 317, 47 S. L. R. 394.

men working at the unloading were employed by a ship-broker, among them being some "tippers." The "barrow man" changed places for a time with a "tipper," and met with an accident while at this work. It was a common practice among the men unloading ships at this port so to exchange work, and the practice was known and not forbidden by the employers. The employment relation was recognized, and compensation awarded.[19]

It is held in a California case, however, that an unauthorized exchange of jobs between two workmen will operate to take them out of their employment and deprive them of the right to compensation.[20]

§ 101. The state and municipalities. The English Act of 1906 expressly provides that "the exercise and performance of the powers and duties of a local or other public authority shall, for the purposes of this Act, be treated as the trade or business of the authority."[20a] This express provision was apparently thought to be necessary in order to make it certain that municipalities were intended to be covered by the Act.

The Illinois Act, by the section now under consideration, expressly includes "the State, and each county, city, town, township, incorporated village, school district, body politic or municipal corporation therein."

Section 3, however, provides that it shall only apply to *employers "engaged in any of the following enterprises or businesses,"*—following with a list of extra-hazardous industries. While the State or a municipality is an "employer" within the language of Section 4, the question therefore arises whether, either is an employer engaged in any occupation, enterprise or business referred to in Section 3, as extra-hazardous. Is the State or any municipality mentioned in Section 4, under the Act, by operation of law?

The State can properly exercise only such powers as are of a governmental nature, it being held that even in the absence of an express prohibition the State has no

[19] Henneberry v. Doyle, 46 Ir. L. T. 70, 5 B. W. C. C. 580.

[20] Sherer & Co. v. Industrial Accident Commission, 166 Pac. (Cal.) 318.

[20a] 6 Ed. VII, Chap. 58, § 13.

power to embark in any trade which involves the process of purchase and sale for profit.[21]

In the State there are two classes of political corporations, one of which is the State and the other the municipal corporations, and the State and municipal officers are but agencies and agents of the State to enable it, as a corporation, the better to discharge its duties and perform its functions, and these functions are of a governmental, rather than of a business, character.[22] For example, in a Kansas case, it was said that in enforcing the laws of the State against crime, cities are exercising a purely governmental function, as distinguished from their proprietary function, such as operating electric light and power plants and water systems, and, as compensation laws are intended to apply only to employees engaged in trade or business, they should not be held applicable to a policeman whose employment is that of an officer of the State.[23]

Likewise, it has been said that to come within the operation of the Workmen's Compensation Act, a workman must be employed in one of the various classes of enterprises named in the statute, and that enterprise must be for the purpose of business, trade or gain; and that cities in constructing sewers in their corporate capacity are not engaged in trade within the meaning of the Workmen's Compensation Act and do not receive any gain or profit therefrom and are, therefore, not within the terms of the Act as employers.[24] The Appellate Court of Illinois held under a similar state of facts that the workman was an employee.[25]

In an Illinois case where this question apparently was not raised it was held that a police officer was an employee of the City and that the City was an employer

[21] McCullough v. Brown, 41 S. C. 220.

[22] Hamilton County v. Noyes, 5 Ohio Dec. (Reprint) 238, 3 American L. Rec. 745.

[23] Griswold v. City of Wichita, 162 Pac. (Kas.) 276; City of Chicago v. Industrial Commission, 291 Ill. 23; *contra:* LaBelle v. Village of Gross Point, 167 N. W. (Mich.) 923.

[24] Redfern v. Eby and City of Anthony, 170 Pac. (Kas.) 800, 16 N. C. C. A. 667.

[25] Brown v. Decatur, 188 Ill. App. 147.

within the meaning and intent of the Workmen's Compensation Act.[26] But it was held in another case involving an ordinance of the City of Chicago, which defined a policeman as an official and requiring him to subscribe to an oath as an officer of the City, that he for that reason only was not an employee.[27]

The State may properly conduct a "business," even though it may yield a profit, where it is done merely as an exercise of police power. Instances of this kind are where the State conducts the sale of intoxicating liquors in the State,[28] or engages in the manufacture of goods by convict labor.[29] But where a State thus engages in ordinary business, pursuing it like an individual it throws off, for the purpose, its sovereignty and becomes subject to the rules governing the conduct of private individuals.[30]

While, therefore, the Supreme Court of Illinois has held that the law applied to cities[31] and to townships,[32] and other municipalities, and while the Appellate Court has held that a workman preparing a leak in the city water main is "repairing a structure,"[33] in none of these cases does it appear that this question was urged or considered, and they decided nothing more than that a city or municipality may be an employer within the *language* of the Act.

It would seem that the proper test as to whether the State or municipality is so engaged in business as to

[26] Marshall v. City of Pekin, 276 Ill. 187, 14 N. C. C. A. 945, 1082. See also City of Rock Island v. Industrial Commission, 287 Ill. 76.

[27] City of Chicago v. Industrial Commission, 291 Ill. 23. See also State ex rel. v. Carroll, 162 Pac. (Wash.) 593, 14 N. C. C. A. 932; Ryan v. City of New York, 126 N. E. (New York) 350; Roberts v. City of Ottawa, 165 Pac. (Kas.) 869; Gray v. Board of County Commissioners, 165 Pac. (Kas.) 867, 14 N. C. C. A. 938.

[28] So. Carolina v. United States, 199 U. S. 437.

[29] In re Western Implement Co., 166 Fed. 576; affirmed in 171 Fed. 81.

[30] State Bank v. Dibrell, 3 Sneed (Tenn.) 379; IX Ill. L. Rev. (May, 1914), p. 50; Johnston v. City of Chicago, 258 Ill. 494.

[31] Marshall v. City of Pekin, 276 Ill. 187; City of Rock Island v. Industrial Commission, 287 Ill. 76.

[32] McLaughlin v. Industrial Board, 281 Ill. 100, 16 N. C. C. A. 677, 682.

[33] Brown v. Decatur, 188 Ill. App. 147.

make it subject to the provisions of the Act is whether, under its police power, it has gone into some business in the manner illustrated in the cases cited and thrown off its sovereignty for that purpose, or whether, as merely incidental to the exercise of its governmental powers, it may be doing some act or acts which, set apart and considered alone, would fall within the classification of industries set forth in Section 3. In other words, is it exercising a business or a governmental function? For example, the carrying on of the liquor business by the State would seem to bring it within the rule, but, on the other hand, if the State carried on some building, construction, excavating or electrical work, or other enterprise, properly described by the words used in the hazardous classification of industries in Section 3 of the Act, but merely in the exercise of its governmental powers, it is not clear that it should be considered as engaged in any "enterprise or business" mentioned in Section 3. Furthermore, a State cannot be sued without its consent and this sovereign power will not be treated as relinquished or conveyed away by inference or legal construction.[34]

It has been held in other jurisdictions under a similar provision that the State was not covered by the Act in carrying on work incidental to its governmental functions.[35]

Under the California Act it was held that a Reclamation District was not an employer under the Act, as it was not organized with public or governmental powers, or for public or governmental purposes, but was merely a governmental agency with limited powers.[36]

Most of the public work of the kind mentioned in Section 3 of the Act carried on by a state or municipality,

[34] Lewis' Sutherland Stat. Constr., § 558.

[35] Miller v. Pillsbury, 128 Pac (Cal.) 327; Allen v. State, 160 N. Y. Supp. 85, 173 App. Div. 455; Clark v. County, 161 Pac. (Ore.) 702; Griswold v. City of Wichita, 162 Pac. (Kas.) 276; Redfern v. E. B. and City of Anthony, 170 Pac. (Kas.) 800, 16 N. C. C. A. 667. See also Brown v. Industrial Accident Commission, 163 Pac. (Cal.) 664, 14 N. C. C. A. 495.

[36] Reclamation District No. 900 v. Industrial Accident Commission, 166 Pac. (Cal.) 323.

is commonly done through the agency of contractors, and not directly by the state or municipality itself; and the proviso of Section 5 [37] of the Act expressly excludes the State and the municipalities referred to, from liability under such circumstances, in the following words: "Provided: that one employed by a contractor who has contracted with the State, or a county, city, town, township, incorporated village, school district, body politic or municipal corporation therein, through its representatives, shall not be considered as an employee of the State, county, city, town, township, incorporated village, school district, body politic or municipal corporation, which made the contract."

[37] *Post*, Chap. V, p. 196.

CHAPTER V

WHO ARE EMPLOYEES?

Sec. 5 of the Illinois Act

§ 5. The term "employee" as used in this Act, shall be construed to mean:

First—Every person in the service of the State, county, city, town, township, incorporated village, or school district, body politic or municipal corporations therein, under appointment, or contract of hire, express or implied, oral or written, except any official of the State, or of any county, city, town, township, incorporated village, school district, body politic or municipal corporation therein: *Provided,* that any such employee, his personal representative, beneficiaries or heirs, who is, are or shall be entitled to receive a pension or benefit for or on account of disability or death arising out of or in the course of his employment

Sec. 5 of the Illinois Act

from a pension or benefit fund to which the State or any county, town, township, incorporated village, school district, body politic or municipal corporation therein is a contributor, in whole or in part, shall be entitled to receive only such part of pension or benefit as in excess of the amount of compensation recovered and received by such employee, his personal representative, beneficiaries or heirs under this Act: *And, provided further*, that one employed by a contractor who has contracted with the State, or a county, city, town, township, incorporated village, school district, body politic or municipal corporation, therein, through its representatives, shall not be considered, as an employee of the State, county, city, town, township, incorporated village, school district, body politic or municipal corporation which made the contract.

Second—Every person in the service of another under any contract of hire, express or implied, oral or written, including aliens, and minors who are legally permitted to work under the laws of the State, who, for the purpose of this Act, shall be considered the same and have the same power to contract, receive payments and give quittances therefor, as adult employees, but not including any person who is not engaged in the usual course of the trade, business, profession or occupation of his employer: *Provided,* that employees shall not be included within the provisions of this Act when excluded by the laws of the United States relating to liability of employers to their employees for personal injuries where such laws are held to be exclusive. [Amended by Act approved May 31, 1917.

§ 102. Definitions. In like manner as in Section 4 of the Act with reference to the word "employer," the legislature has in this Section (5) described what class of persons and corporations shall be included within the

term "employee" as used in the Compensation Act. It has been held that the definition should be liberally construed.[1] The term refers to civil employment as distinguished from military.[2] The term "employee" is the correlative of the term employer, and neither term has, either technically or in general use, a restricted meaning by which any particular employment is indicated.[3]

§ 103. Public officers. By the express terms of this Section officials of the State or of municipalities are excluded. Public officers are not usually included within the meaning of the term "employee."[4]

It is also held under the provisions of the Illinois Act excluding from the definition of "employee" any person in the service of the State, county or city, "for whose accidental injury or death, arising out of and in the course of his employment, compensation or a pension shall be payable to him, his personal representatives, beneficiaries or heirs, from any pension or benefit fund to which the State or any county, city or any municipal corporation therein contributes," etc.—that a city fireman, who died as the result of an accident received while responding to a fire alarm and who left no one surviving eligible to receive a pension from such a fund, was not

[1] Marshall Field & Co. v. Industrial Commission, 285 Ill. 333. See also: In re Cox, 114 N. E. (Mass.) 281, 14 N. C. C. A. 132, 1075, 15 N. C. C. A. 271.

[2] Muller v. City of N. Y., 178 N. Y. Supp. 416.

[3] People v. Buffalo, 57 Hun. (N. Y.) 577, 581.

[4] Bunn v. People, 45 Ill. 397, 403, 2 Ill. Notes, p. 856, § 361; Moll v. Sbisa, 51 La. Ann. 290; People v. Board of Police, 75 N. Y. 38; People v. Buffalo, 57 Hun. (N. Y.) 577; People v. Meyers, 11 N. Y. Supp. 217, 25 Abb. N. Cs. (N. Y.) 368; Com. v. Fitler, 147 Pa. St. 288. *Compare,* White v. Alameda, 124 Cal. 95; City of Chicago v. Industrial Commission, 291 Ill. 23; City of Chicago v. Industrial Commission, 293 Ill. 188; Ryan v. City of N. Y., 126 N. E. (N. Y.) 350; Mono County v. Industrial Accident Commission, 167 Pac. (Cal.) 377; City of Los Angeles v. Industrial Accident Commission, 169 Pac. (Cal.) 260. *Contra:* as to assistant fire chief,—Mayor of Jersey City v. Borst, 101 Atl. (N. J.) 1033; and deputy sheriff acting in private capacity,—Engels Copper Min. Co. v. Industrial Accident Com., 185 Pac. (Cal.) 182; and associate member of fire department, Cole v. Fleischman Mfg. Co., 178 N. Y. Supp. 451. See also: McNally v. City, 163 N. W. (Mich.) 1015; Ryan v. City of N. Y., 178 N. Y. Supp. 402.

an employee, in view of the express exception of the statute above quoted. The court said:

"Up until the very time of his death he was excepted from the provisions of the Compensation Act. * * * Until his death it was not possible to determine that he would not be survived by a widow or minor children and so it was not possible to determine until after his death that he would not leave surviving him 'beneficiaries or heirs' to whom a pension would be payable from a fund to which the city had contributed. Whether or not a person is an employee within the meaning of the Workmen's Compensation Act must be determined from the situation existing during his lifetime."[5]

§ 104. Independent contractors, as defined in the law, are not included within the meaning of the term "employee."[6]

§ 105. Independent contractors,—illustrative cases. The right to control the manner of doing the work is the principal consideration which determines whether the worker is an employee or an independent contractor.[7]

[5] City of Chicago v. Industrial Com., 293 Ill. 188.

[6] Cinofsky v. Industrial Commission, 290 Ill. 521; Woodhall v. Irwin, 167 N. W. (Mich.) 845; Tsangournos v. Smith, 171 N. Y. Supp. 256, 17 N. C. C. A. 698; Zeitlow v. Smock, 117 N. E. (Ind. App.) 665, 15 N. C. C. A. 495; Yoho Water & Power Co. v. Industrial Accident Commission, 168 Pac. 1146 (Cal.), 15 N. C. C. A. 451; Sugar Valley Coal Co. v. Drake, 117 N. E. (Ind. App.) 937, 15 N. C. C. A. 452; In re Clancey, 117 N. E. (Mass.) 347, 15 N. C. C. A. 454; Connelly v. Industrial Accident Commission, 160 Pac. (Cal.) 239, 14 N. C. C. A. 431, 15 N. C. C. A. 490; Manghelle v. J. H. Price & Sons, 161 Pac. (Kas.) 907, 15 N. C. C. A. 498; Clark v. Tall Timber Lumber Co., 73 So. (La.) 239, 15 N. C. C. A. 489; but see: Brown v. Industrial Accident Commission, 163 Pac. (Cal.) 664, 14 N. C. C. A. 495; Dale v. Construction Co., 175 App. Div. (N. Y.) 284, 15 N. C. C. A. 454; Columbia School Supply Co. v. Lewis, 116 N. E. (Ind. App.) 1; McNally v. Diamond Mills Paper Co., 199 N. E. 242. See also the following common law cases: Foley v. Chicago, etc., R. Co., 64 Iowa 644; State v. Emerson, 72 Me. 455, 456; Ballard v. Miss. Cotton Oil Co., 81 Miss. 507; Maryland Fid. Co. v. Parkinson, 68 Neb. 319; Lehigh Coal Co. v. N. J. Cent. Ry. Co., 29 N. J. Eq. 252, 255; Balch v. N. Y., etc., Ry. Co., 46 N. Y. 521; Com. v. Behle, 1 Lack. Leg. N. 303; Farmer v. St. Croix Power Co., 117 Wis. 76; Vane v. Newcombe, 132 U. S. 220, 33 L. Ed. 310.

[7] Meredosia Levee Dist v. Industrial Commission, 285 Ill. 68, 17 N. C. C. A. 683, 693; Decatur Railway & Light Co. v. Industrial Board, 276 Ill. 472, 14 N. C. C. A. 139, 15 *Id.*

It has also been said that the test for determining whether one is an employee or an independent contractor is to ascertain whether the employee represents the master as to the results of the work, or only as to the means of accomplishing it. If only as to the results, and he himself selects the means, he must be regarded as an independent contractor.[8] And it is not the fact of actual interference with the control of the work, but the *right* to interfere that marks the difference between the independent contractor and the servant or agent.[9] The mere fact that the employer does not exercise direct supervision over the employee, does not prove that the employee is an independent contractor.[10] And a distinction is to be made between authoritative control and mere suggestion as to the details of the work.[11] And mere payment of wages is not such control as to make the workman an employee.[12] The cost-plus plan of contracts does not operate to change the relationship of independent contractor to that of employee, if as a matter of fact the employee has no right of control over the work, except as to ultimate results.[13]

In the following cases the workman has been held to be an independent contractor rather than an employee: Where the owner of a portable sawmill enters into a written contract with one of his former employees by which such employee agrees to operate the mill, furnish all labor and minor repairs, and cut the lumber for a certain sum per thousand feet.[14]

494, 1020; Cinofsky v. Industrial Commission, 290 Ill. 521.

[8] Pace v. Appanoose Co., 168 N. W. (Iowa) 916, 17 N. C. C. A. 682, 942; Mobley v. J. C. Rogers Co., 119 N. E. (Ind. App.) 477; Storm v. Thompson, 170 N. W. (Iowa) 403; Boyle v. Mahoney & Tierney, 103 Atl. (Conn.) 127, 16 N. C. C. A. 893.

[9] Van Simaeys v. George R. Cook Co., 167 N. W. (Mich.) 925, 17 N. C. C. A. 689.

[10] Rosedale v. Industrial Accident Commission, 174 Pac. (Cal.) 351, 17 N. C. C. A. 389, 688.

[11] Industrial Commission of Colo. v. Maryland Casualty Co., 176 Pac. (Col.) 288, 17 N. C. C. A. 694, 696.

[12] Arnett v. Hayes Wheel Co., 166 N. W. (Mich.) 957; Holbrook v. Olympia Hotel Co., 166 N. W. (Mich.) 867.

[13] Carleton v. Foundry & Machine Products Co., 165 N. W. (Mich.) 816, 15 N. C. C. A. 492.

[14] LaMay v. Industrial Commission, 292 Ill. 76.

The employer had several smoke stacks connected with his industrial plant and the workman agreed with the employer that he would paint the stacks for the sum of $50.00, he to furnish the rope, tackle, scaffolding and other necessary equipment. The employer was to supply the paint and pay the wages of a man to help the workman. It was held that the fact that the employer furnished the paint and a helper did not create the necessary element of control over the manner of doing the work.[15]

Where the workman made a contract to draw logs for $2.50 a cord, he to furnish and care for the team and unload the logs at destination, he was held to be an independent contractor.[16]

Where the owner of a dredging machine contracted with a drainage district to do certain work for $25.00 a day which included his own work and the work of his employee, the use of his machine and the gasoline to run it, he was held an independent contractor, even though one of the commissioners of the drainage district was employed to supervise the work and direct its location and extent, with power to discharge the contractor if the work was not done as the district desired.[17]

In the following cases the workman has been held to be an employee and not an independent contractor: A mechanic who conducts a small shop and who is engaged by the employer to erect a new smoke stack at his plant and is told to get what help he needs in addition to two men assigned to the work by the employer.[18] A paper hanger employed by a store under the direction of his foreman to hang paper for customers of the store, although not on the pay roll of the store.[19] A teamster who is engaged to haul freight with his own horse and

[15] Lits v. Risley Lumber Co., 120 N. E. (New York) 730; Smith v. State Workmen's Insurance Fund, 105 Atl. (Pa.) 90, 17 N. C. C. A. 696.

[16] Robichaud's case, 124 N. E. (Mass.) 890.

[17] Meredosia Levee District v. Industrial Commission, 285 Ill. 68; see also Eckert's case, 124 N. E. (Mass.) 421.

[18] Cummings v. Underwood Silk Fabric Co., 171 N. Y. Supp. 1046, 17 N. C. C. A. 685.

[19] In re McAllister, 118 N. E. (Mass.) 326.

wagon, who is employed continuously by the same employer and paid a fixed sum per week and is required to report for duty every day or send a substitute, and who gives all his time to his work, there being nothing in his contract or the conduct of the work that indicates that his employer has surrendered the right to control any part of the details of the work.[20] An arrangement for cutting wood at so much a cord, there being no supervision of the work except as to the quantity of the wood cut.[21] Where a teamster was employed by an independent contractor who was employed by an employer to engage a teamster to cart material, tools and supplies from its yard to the site of the building he was erecting, the teamster being injured while doing such work.[22]

Whether a workman is an employee or an independent contractor is a question of fact upon which the judgment of the Industrial Commission is conclusive where the facts are in dispute. It only becomes a question of law when no other inference can reasonably be drawn from the facts that the workman was an independent contractor.[23] The decision of the Commission that the workman is an employee and not an independent contractor is conclusive where the facts are in dispute.[24]

An attempt in the statute to include independent contractors within the definition of employees when they are not so in fact, pursuant to constitutional authority to legislate as to employees, has been held unconstitutional and void.[25]

[20] Bristol & Gale Co. v. Industrial Commission, 292 Ill. 16.

[21] Fidelity & Deposit Co. of Maryland v. Brush, 168 Pac. (Cal.) 890.

[22] In re Cummorford, 118 N. E. (Mass.) 900.

[23] Cinofsky v. Industrial Commission, 290 Ill. 521; Sawtells v. Ekenberg Co., 172 N. W. (Mich.) 581.

[24] Belmonte v. Conner, 106 Atl. (Pa.) 787. See also Oberg v. McRoberts & Co., 175 App. Div. 1, 16 N. C. C. A. 679.

[25] Flickenger v. Industrial Acc. Com., 184 Pac. (Cal.) 851. See also the following common law cases: Foley v. Chicago, etc., R. Co., 64 Iowa 644; State v. Emerson, 72 Me. 455, 456; Ballard v. Miss. Cotton Oil Co., 81 Miss. 507; Maryland Fid. Co. v. Parkinson, 68 Neb. 319; Lehigh Coal Co. v. N. J. Cent. Ry. Co., 29 N. J. Eq. 252, 255; Balch v. N. Y., etc., Ry. Co., 46 N. Y. 521; Com. v. Behle, 1 Lack. Leg. N. 303; Farmer v. St. Croix Power Co., 117 Wis. 76; Vane v. Newcombe, 132 U. S. 220, 33 L. Ed. 310.

§ 106. Private executive officers, partners, etc. The law with reference to workmen's compensation contemplates two persons standing in an opposed relationship of master and servant, employer and employee, plaintiff and defendant, or a person entitled to a judgment or award in his favor against another person obligated to pay it. The law does not contemplate the anomaly of one person occupying this dual relation and paying himself for injuries out of funds in which he has a joint interest.[26]

It is, therefore, generally held that executive officers of private corporations and members of partnerships are not entitled to compensation for injuries sustained in connection with the industry carried on by them because a person cannot be, at one and the same time, employer and employee.[27]

Furthermore, the primary purpose of workmen's compensation is economic rather than personal, public rather than private, and is designed to mitigate the shock of industrial accidents in providing workmen who receive a limited income and who have no other means of support for themselves and their families except their daily earnings with a reasonable sustenance during the period of incapacity resulting from injury so that they may not become dependent upon public or private charity. It is no part of the compensation plan to provide benefits for responsible officials and managers who receive substantial salaries and have other sources of income from stock in the company in which they hold executive positions or from other investments. There is no economic reason, therefore, for including such

[26] Cooper v. Industrial Acc. Com., 171 Pac. (Cal.) 684.

[27] Bowne v. S. W. Bowne Co., 116 N. E. (New York) 364, 221 N. Y. 28, 15 N. C. C. A. 460; Palmer v. VanSantvoord, 153 New York, 612; McNally v. City of Saginaw, 163 N. W. (Mich.) 1015; Weatherby v. Saxony Woolen Co., 29 Atl. (N. J.) 326; Cushman's case, 120 N. E. (Mass.) 78; Ellis v. Ellis, (1905), 1 K. B. 324, 7 W. C. C. 97; Boon v. Quance, 3 B. W. C. C. 106, (1909), 102 L. T. 443; Reinging v. Aetna Life Ins. Co., 3 Calif. Industrial Acc. Com. 82; Ferranti v. Kennedy, 1 Conn. Compensation Dec. 196; In re Cooper, 1 Bulletin Ohio Industrial Com. 180.

executive officers within the terms of the Compensation Act.

The United States Supreme Court, in discussing the reasons for the adoption of workmen's compensation laws in this country, said:

"Under the present system the *injured workman* is left to bear the greater part of industrial accident which, *because of his limited income,* he is unable to sustain, so that he and those dependent on him are overcome by poverty and frequently become a *burden upon public or private charity.*" [28]

In a leading New York case, the court, in discussing this fundamental economic principle of workmen's compensation, said:

"A workman in a broad sense is one who works in any department of physical or mental labor, but in common speech is one who is employed in manual labor, such as an artificer, mechanic, or artisan; while an employee in a broad sense is one who receives salary or wages or other compensation from another * * * but in common speech the term is usually applied to clerks, laborers, etc., and not to the higher officers of a corporation. The statutory definition speaks of one 'in the service' of an employer. In a broad sense the officers of a corporation serve it, but in common speech they are not referred to as its servants or employees. * * * The short title of the Act, the limitation thereof to employers employing workmen, the evil to be remedied, the method of remedying the evil, the obvious incongruity of applying the law to the principal executive officer of a corporation as an accident insurance at the maximum rate of not to exceed $20 a week based on loss of earning power, all point conclusively to a distinction between such an officer and other employees which the court should not disregard. The claimant in this case is willing, in order to collect a workman's allowance for himself from the insurance carrier, to assume a status that he might be the

[28] New York Central R. Co. v. White, 243 U. S. 188, 13 N. C. C. A. 943.

first to disclaim for any other purpose. Theoretically he was subject to the orders of his corporation and was liable to be discharged for disobedience. Practically he was the corporation, and only by a legal fiction its servant in any sense. Section 30 of the Act provides that 'No benefits, savings or insurance of the injured employee, independent of the provisions of this chapter, shall be considered in determining the compensation or benefits to be paid under this chapter.' But these words are appropriate to the meager advantages of a workman and not to the comfortable dividends of a stockholder."[29]

In another New York case it appeared that at the time of the accident the claimant owned 95 per cent of the stock of the company by which he was employed and at some time prior to the accident he had been its president. At the time of the accident, however, he held no office but his salary had been included in the pay roll upon which the compensation insurance premium was based. Under these circumstances the court sustained an award in claimant's favor and held that, notwithstanding his stock ownership, he and the company were separate individuals and that he was an employee within the meaning of the Act.[30]

In another case the claimant owed 7 out of 100 shares of the employing company's stock and was its vice president, and was employed as general foreman of the company, which was engaged in the wholesale grocery business and in connection therewith bottled various kinds of goods such as olives, vinegar, catsup, etc. While working with bottles containing some of these products a bottle broke and a piece of glass flew into the employee's eye, causing injury. An award in favor of the employee was reversed on other grounds, but in overruling the contention that the claimant was not an employee, the court said:

[29] Bowne v. S. W. Bowne Co., 221 N. Y. 28, 116 N. E. 364, (1917), rev'g 176 N. Y. App. Div. 131, 162 N. Y. Supp. 244, (1916), 15 N. C. C. A. 461.

[30] Kennedy v. Kennedy Mfg. & Eng. Co., 177 App. Div. (N. Y.) 56, 15 N. C. C. A. 461, 771.

"While he was vice president of the corporation, his employment was doubtless through the board of directors, of whom he may or may not have been one; and, although he was the general foreman, he worked in the various industries of the corporation the same as other workmen and was doing the work of an ordinary employee at the time he was injured. His being vice president and a stockholder in no way affected his status as an employee."[31]

The authority of this decision, however, is largely nullified by the decision of the Court of Appeals of New York in the *Bowne* case above referred to.[32]

This New York rule has been somewhat modified in some of the other states where it is held if an executive officer of a corporation is at the time of the injury actually engaged in, or is superintending, manual labor, he occupies a dual relation toward the corporation, and being at the time of the accident engaged as an employee, he is within the law and entitled to compensation.[33]

In Texas this distinction has been extended to a director of a corporation under a statute which expressly excluded directors from the definition of "employee," the director at the time of the accident being actually engaged in work with the other employees.[34]

With reference to partnerships, it was said in the leading English case of Ellis v. Ellis that "a person who is a partner cannot put himself into a position of not being a partner or into a position of being a 'workman' being employed, when he is really the person giving employment. The whole Act depends upon the relation of employer and employee. Section 1 contemplates a relationship between two parties, between the employer and the person whom he employs, and I do not think that one person can be both employer and employee."[35]

[31] Beckmann v. Oelerich & Son, 174 App. Div. (N. Y.) 353, 160 N. Y. Supp. 791, (1916), 15 N. C. C. A. 461.

[32] See also Howard v. Howard, 221 N. Y. 605, 15 N. C. C. A. 461.

[33] Cashman's case, 120 N. E. (Mass.) 78.

[34] Millers Mutual Casualty Co. v. Hoover, 216 S. W. (Tex.) 475.

[35] (1905), 1 K. B. 324, 7 W. C. C. 97. See also Nevills v. Moore Mining Co., 135 Calif. 561.

A wife cannot be an employee of a firm in which her husband is a partner because, under the law, a wife cannot make a contract with her husband.[36] But it has been held that a son may be an employee of a partnership of which his father is a partner.[37]

§ 107. "Every person in the service of another,"—construed. It is apparent, both from the language of the Act and from the decisions of the courts, that the common law definition of "employee" as used in compensation laws has been somewhat enlarged and, as we have already seen, it is held that the definition of "employee" under such Acts is to be liberally construed.[38]

The language of the English Act is that the word "workman" * * * "means any person who has entered into or works under a contract for service or apprenticeship with an employer, whether by way of manual labor, clerical work, or otherwise, and whether the contract is express or implied, oral or in writing."[39] It will be noted that this language is very similar to that employed in the Illinois and other American Workmen's Compensation Acts. It would seem, however, that the language of the Illinois Act would be capable of a broader construction than the English Act because the former applies to "every person in the service of another under any contract of hire;" whereas, the latter applies to those who enter into or work under a "contract of service;" under which language the English courts hold that a contract for services is not covered.[40]

In an English case, the difference between a "contract of service" and a contract for services was pointed out as follows:

"An usher in a private school, or a teacher in a provided or non-provided school, or a nursery governess would, under ordinary circumstances, be entitled to

[36] In re Humphrey, 116 N. E. (Mass.) 412, 15 N. C. C. A. 458, 771.

[37] McNamara v. McNamara, 100 Atl. (Conn.) 31, 15 N. C. C. A. 459.

[38] Marshall Field & Co. v. Industrial Commission, 285 Ill. 333.

[39] 6 Edw. VII, Chap. 58, § 13.

[40] Simmons v. Heath Laundry Co., (1910), 1 K. B. 543, 3 B. W. C. C. 200.

claim the benefit of the Act. On the other hand it would, I think, be absurd to hold that a skilled music master who gives lessons to a pupil, either in his own house or the pupil's house is to be regarded as the 'workman,' and the pupil as the 'employer.' In such a case there may be a contract for services, but there is not a contract of service. In any particular case it will be for the arbitrator, after considering all the circumstances, to decide whether the injured professional person is or is not a 'workman.' This is not a question of law, but a question of fact, and, unless the arbitrator has misdirected himself, this court ought not to interfere."[41] It would not seem that the language of the Illinois Act, viz., "in the service of another" would be subject to the same restricted construction.

The following American cases illustrate the extent to which the definitions of the word "workman" or "employee" have been extended.

Where a lumberman employed by a Country Club for the purpose of clearing a considerable tract of timber as incidental to club purposes;[42] a caddy employed by a golf club;[43] a police officer assigned to a city station whose duties included the fixing of the electric lights, who was injured while removing a bulb from an electric fixture;[44] a teacher in the public school.[45]

A person who merely volunteers his services, however, to another, or who volunteers to assist other employees, does not thereby become an employee within the meaning of the Act;[46] or where a workman is injured while doing the work of a fellow employee, as an accommoda-

[41] Simmons v. Heath Laundry Co., (1910), 1 K. B. 543, 3 B. W. C. C. 200.

[42] Uhl v. Hartwood Club, 166 N. Y. Supp. 1000, 15 N. C. C. A. 771.

[43] Claremont Country Club v. Industrial Acc. Com., 163 Pac. (Cal.) 209, 15 N. C. C. A. 447.

[44] Ryan v. City of New York, 178 N. Y. Supp. 402.

[45] Elk Grove Union High School District v. Industrial Acc. Com., 168 Pac. (Cal.) 392, 15 N. C. C. A. 148, 231. But see *contra:* Leseur v. City of Lowell, 116 N. E. (Mass.) 483, 14 N. C. C. A. 952, holding that a teacher in an industrial school is not a laborer, although it was his duty to instruct a boy, by whose act he was injured, as to the manner of repairing automobiles and other mechanical work.

[46] Houston E. & W. T. Ry. Co. v. Jackman, 217 S. W. (Tex.) 410.

tion, by private arrangement between the two workmen.[47] And if one is not actually in the service of the employer at the time of the accident he is not an employee and may, therefore, sue for a personal injury sustained, while not at work, caused by employer's negligence.[48]

§ 108. Relation of master and servant. It is held under the English Act, that the cardinal rule, under the definition of "workman" is that there must exist the relationship of master and servant. Whether or not that relationship exists is a question of fact.[49] In the absence of an express provision in the statute to the contrary, this is also the rule under the American compensation laws. For example, in cases of partnership, it is held that a partner is not an employee of the partnership because the law relative to compensation contemplates two persons, standing in the opposed relation of master and servant, employer and employee, and that the law does not contemplate the anomaly of one person occupying this relation.[50]

It would seem that under the definitions in Sections 4 and 5 of the Illinois Act, in which the terms "employer" and "employee" are co-related, the English rule would be applicable, and that the relationship of master and servant must exist, and that the words employer and employee as defined in the Act must mean the same as the words master and servant.[51] The relationship, in the law, is the same in either case. While the workman may be working under either an oral or written contract of employment, under the Act, if there is a written contract it is held that its terms must be considered in de-

47 Sherer v. Industrial Accident Commission, 166 Pac. (Cal.) 318.

48 Cox v. U. S. Coal & Coke Co., 92 S. E. (W. Va.) 559, 15 N. C. C. A. 272.

49 Vamplew v. Parkgate Iron & Steel Co., (1903), 1 K. B. 851, 5 W. C. C. 114; Smith v. General Motor Cab Co., Ltd., (1911), A. C. 188, 4 B. W. C. C. 249.

50 Cooper v. Industrial Accident Commission, 171 Pac. (Cal.) 684; see also Woodhall v. Irwin, 167 N. W. (Mich.) 845; Kirby Lumber Co. v. McGilberry, 205 S. W. (Tex.) 835.

51 See Connolly v. Peoples G. L. & C. Co., 260 Ill. 162.

termining the question whether the relation of master and servant exists between the parties.[52] And it is held that the rules of law which apply to contracts generally should be applied in determining whether a contract of employment exists.[53]

In determining whether the relationship exists, it is important to consider the character and conditions of the employment, the payment of wages or salary, the power of dismissal, and the power of controlling the work of the employee or servant. For example, it not infrequently happens that employee works at intervals for a number of different employers, and while working for one of them sustains an injury. It has been held that where a workman is employed under independent and concurrent contracts with several employers, compensation must be paid by the employer for whom he was working at the time of the injury.[54] In other cases the workman is loaned temporarily to another employer, remaining on the payroll of his regular employer, and the question arises as to who is liable for compensation for an injury sustained while doing such temporary work. In a Massachusetts case, an employee at the time of the accident, received his wages from an ice company, but was receiving his orders from a coal company for which he was temporarily working. It was held that in determining whether the employee was the servant of his original master or of the person to whom he had been furnished, the general test should be whether the act to be done was done in business of which the person is in control, as the proprietor, so that he can at any time stop it or continue it, and determine the way in which it shall be done, not merely with reference to the result to be reached, but with reference to the method of reaching the result, and that where the employee is loaned to another, without any control over the result to be reached, or the

[52] LaMay v. Industrial Commission, 292 Ill. 76.

[53] Kackel v. Serviss, 167 N. Y. Supp. 348.

[54] In re Howard, 125 N. E. (Ind. App.) 215.

method of reaching it, he is the employee of the person to whom he is loaned.[55]

Generally speaking, a servant is a person who is subject to the command of his master, as to the manner in which he shall do his work.[56] And the greater the amount of direct control exercised over the person rendering the services, by the person contracting for them, the stronger the grounds for holding it to be a contract of service, and similarly, the greater the degree of independence of such control, the greater the probability that the services rendered are of the nature of professional services, and that the relationship of master and servant does not exist.[57] Of course if the relation does not exist *at the time of the accident,* the Compensation Act does not apply, regardless of what the relationship was before or after the accident.[58] For example, an extra switchman employed from day to day when needed, reported for work and after being told that there was no employment at that time, climbed on a moving freight train for his own convenience in going home, and collided with a viaduct under which the train passed, and it was held that the relation of master and servant did not exist, and that therefore no compensation should be paid.[59] The fact that a workman is hired, to begin work at some future time, does not create the relation of master and servant so as to make the employer liable for compensation for an injury sustained before the employee begins his work, and this even though the workman has received partial compensation in the nature of transportation to the place of his work.[60] And if the workman is merely promised a job if he proves satisfactory to the foreman, and is given a free ride to the place of employ-

[55] Scribner's Case, 120 N. E. (Mass.) 350.

[56] Yewens v. Noakes, (1880), 6 Q. B. D. 530, 44 L. T. 128.

[57] Simmons v. Heath Laundry Co., (1910), 1 K. B. 543, 550, 3 B. W. C. C. 200.

[58] Pierson v. Interborough Rapid Trans. Co., 168 N. Y. Supp. 425, 16 N. C. C. A. 885, 17 N. C. C. A. 940.

[59] Michigan Central R. Co. v. Industrial Commission, 290 Ill. 503.

[60] B. D. & C. R. R. Co. v. Industrial Board, 276 Ill. 239, 13 N. C. C. A. 490, 14 N. C. C. A. 140, 427, 15 N. C. C. A. 386, 391.

ment, where the foreman is finally to pass upon his fitness for the work, the relation of master and servant does not exist so as to cover an accident happening on the way to the place of employment.[61] But where the employee is on the way to work, in a conveyance furnished by the employer, and has been told that he may go to work upon arrival at the place of employment, and his employment does not depend upon the approval of the foreman, an accident happening on the way to work, under such circumstances, arises out of the employment, the relation of master and servant having been established.[62]

§ 109. Illustrative cases on master and servant relation. As elsewhere stated, partners and co-adventurers in business do not sustain the relation of master and servant on the theory that no man can be at once employer and employee.[63]

The right to control the manner of doing the work is the principal consideration which determines whether the relation of master and servant exists.[64]

Reserving the right to tell the workmen what to do and when to do it establishes the relation of master and servant, as distinguished from the relation of owner and independent contractor.[65]

In the following cases it was held that the relation of master and servant did not exist:

A teamster hauling coal, partly on his own account and partly for the mine, who came and went as he pleased;[66] a workman cutting fire wood at so much per cord without any supervision;[67] where a driver of a city

[61] California Highway Commission v. Industrial Accident Commission, 181 Pac. (Cal.) 112.

[62] Scalia v. American Sumatra Tobacco Co., 105 Atl. (Conn.) 346, 17 N. C. C. A. 951.

[63] See *ante*, § 106.

[64] Decatur Ry. & Light Co. v. Industrial Board, 276 Ill. 472, 14 N. C. C. A. 139; 15 *Id.* 494, 1020.

[65] Columbia School Supply Co. v. Lewis, 116 N. E. (Ind. App.) 1, 14 N. C. C. A. 132, 136; 15 *Id.* 486, 488, 495.

[66] Sugar Valley Coal Co. v. Drake, 117 N. E. (Ind. App.) 937, 15 N. C. C. A. 452; Packett v. Moretown Creamery Co., 99 Atl. (Vt.) 638, 14 N. C. C. A. 136; 15 *Id.* 500. But see Decatur Ry. Co. v. Industrial Board, 276 Ill. 472, 14 N. C. C. A. 139; 15 *Id.* 494, 1020.

[67] Parsons v. Industrial Acc. Com.,

sprinkler, who furnished his services and team for a fixed daily compensation and fed and stabled his horses at his own expense, was killed by his horse while caring for it at his stable in the evening after work;[68] and an employer, engaged in hiring and sub-contracting employees, was held not "employing workmen in hazardous employments;"[69] where a laundry maid supplemented her earnings by giving music lessons, every Saturday, to children, at their homes;[70] where a lecturer was engaged to explain an airship, and the exploits of the aeronaut, although he was paid a weekly salary;[71] where a doctor was employed in the dispensary, by the guardians of the poor at a salary payable partly out of the income, and partly out of local taxation, and who was removable for cause, by the Local Government Board;[72] an independent contractor, even though he may voluntarily assist in the work himself;[73] independent contractors, held to be such, under the following circumstances: Two men agreed to do a specific piece of work in a quarry at a stipulated price per cubic yard. They worked themselves, and paid for an assistant. The employer supported the plant, but did not control the men, and they were not tied down to hours.[74] But the control exercised by the head employer may be such as to negative the existence of an independent contract, and to constitute a species of employment;[75] or the terms of the employment, may show that the employer regarded him as an

173 Pac. (Calif.) 585, 17 N. C. C. A. 685.

68 State v. District Court, 175 N. W. (Minn.) 110.

69 Oberg v. McRoberts & Co., 175 App. Div. (N. Y.) 1, 16 N. C. C. A. 679. See also Dale v. Haul Construction Co., 175 App. Div. (N. Y.) 284, 15 N. C. C. A. 454. See also Manghelle v. J. H. Price & Sons, 161 Pac. (Kas.) 907.

70 Simmons v. Heath Laundry Co., (1910), 1 K. B. 543, 3 B. W. C. C. 200.

71 Waites v. Franco-British Exposition (1909), 25 T. L. R. 441, 2 B. W. C. C. 199.

72 Murphy v. Enniscorthy Board of Guardians, (1908), 2 Ir. R. 609, 2 B. W. C. C. 291.

73 Simmons v. Faulds, (1901), 65 J. P. 371, 3 W. C. C. 169.

74 Hayden v. Dick, (1902), 5 F. 150, 40 S. L. R. 95. To same effect see Vamplew v. Parkgate Iron & Steel Co., Ltd., (1903), 1 K. B. 851, 5 W. C. C. 114.

75 Dunlop & Co. v. McCready (1900), 2 F. 1027, 37 S. L. R. 779.

employee or workman.[76] A man was employed to take his own horse and drag logs, for which he was to be paid a stipulated sum per day. He was not obliged to work himself, or go to work on any particular day, and he could be told not to come until he was wanted. He was held to be an independent contractor and not a workman.[77]

But it has been held in California that the fact that an employee may choose his own time and go and return and not be directed by his employer where to go or to whom to sell, is not conclusive determination of the question of whether the relation of master and servant exists.[78]

§ 110. Other master and servant cases under the English Act. In the following illustrative cases under the English Act, it was held that a contract of service and the relationship of master and servant existed.

A professional foot-ball player engaged by a club for a year at a weekly wage;[79] and (in Ireland) where a vessel was worked by shares, and certain tonnage expenses were deducted from gross freights, and the captain took two-thirds of the residue, paying out of it, all other expenses, the captain making all contracts for freight and engaging the crew, and taking the vessel where he wished, it was held, upon some evidence being produced that if the freight did not suffice to pay the wages of the crew the owners paid them, that a mate drowned at sea, was a "workman" of the owners, and not of the captain.[80] The owner of an estate engaged a man to quarry, in order to provide stone for the use of the estate, in such quantities as the owner's agent should direct. He was to be paid at the rate of 5s a day, and might employ assistants to be paid through him at the

[76] Evans v. Penwyllt Co., (1901), 18 T. L. R. 58, 4 W. C. C. 101.

[77] Chisholm v. Walker, (1909), S. C. 31, 2 B. W. C. C. 261.

[78] Easton v. Industrial Acc. Com., 167 Pac. (Cal.) 288, 15 N. C. C. A. 490. See also Georgia Casualty Co. v. Industrial Acc. Com., 165 Pac. (Cal.) 704; and De Noyer v. Cavanaugh, 166 N. Y. Supp. 992, 15 N. C. C. A. 455.

[79] Walker v. Crystal Palace Football Club, (1910), 1 K. B. 87, 3 B. W. C. C. 53.

[80] Victoria v. Barlow, (1911), 45 Ir. L. T. 260, 5 B. W. C. C. 570.

same rate. A memorandum was kept for the owner, of the days the quarryman worked. Tools were supplied partly by the quarryman and partly by the estate. He was told where to work, but was free to choose the part of the quarry where the excavation was to be made. He was held to be a workman.[81] Also, where the applicant was a quarryman engaged under a written agreement whereby he was paid for every ton of material which he removed. Tools were furnished, and he hired and discharged the men who worked under him. He was in doubt whether he would come under the Act, and served notice of termination of his employment contract. Thereupon, he was assured by the employers that he would receive compensation for any accidents. The court, attaching importance to this assurance, held that he was entitled to compensation, saying that there was, at all events, little to distinguish him from a laborer working at piece work.[82] It was also held in Ireland, that a carter who owned and kept his own cart and horse, and was engaged to haul hay at a stipulated price per ton, was a workman, engaged by piece work.[83] An applicant was engaged in the trade of attaching enamel letters to windows. He worked for a firm of enamel letter makers, from whom he frequently obtained work, and at whose place of business he was in the habit of calling regularly, for at least twelve months prior to his disablement, with a view to obtaining employment. He was in no way precluded from accepting work from others, and might refuse any particular job offered him. He occasionally canvassed among shopkeepers to place letters, on behalf of the firm, and where he did so, was paid only for the orders turned in by him. He was paid by the piece, and had to pay his own expenses. He was held to be a workman.[84] An applicant was engaged to break stones for road metal, at a fixed rate per cubic yard by

[81] Paterson v. Lockhart, (1905), 7 F. 954, 3 B. W. C. C. 541.

[82] Evans v. Penwyllt Dinas Silica Brick Co., (1901), 18 T. L. R. 58, 4 W. C. C. 101.

[83] Mooney v. Sheehan, (1903), 37 Ir. L. T. Rep. 166.

[84] Burnham v. Taylor, (1910), S. C. 705, 3 B. W. C. C. 569.

one Boyd, who had a contract for the supply of road metal with a county road authority, and who furnished him with material. Applicant was under Boyd's orders, and subject to dismissal by him. The applicant was injured while engaged on the work, and claimed compensation from Boyd, as a workman, and compensation was allowed.[85] A blind man was injured while working for an institution for the blind. The department in which he worked was supported by charitable donations received by the institute. In return for the man's services, the institute gave him board, lodging and 5s a month, on the other hand, receiving on his account, charitable and parochial assistance which aggregated a few pounds less than the amount spent on him. He was held to be a workman.[86]

§ 111. **Aliens and minors.** The section of the Illinois Act under consideration expressly includes within the term "employee," "aliens and minors who are legally permitted to work under the laws of the State." As to minors it is further provided that they, "for the purposes of this Act, shall be considered the same and have the same power to contract, receive payments and give quittances therefor, as adult employees." This provision would seem to place legally employed minors upon exactly the same footing as adult employees, with the same rights and the same authority to adjust and release their claims for injuries as adults have under the Act.[87]

The Supreme Court of Tennessee has said: "We think there is no question as to the power of the legislature to endow minors with the right to make contracts otherwise lawful, and after he becomes so endowed he becomes, for the purpose of the Act an adult, or at least on the same plane."[88]

Aliens were held by construction to be entitled under

[85] Boyd v. Doharty, (1909), S. C. 87, 46 S. L. R. 71, 2 B. W. C. C. 257.

[86] MacGillivray v. Northern Co. Inst., etc., (1911), S. C. 894, 4 B. W. C. C. 429, 48 S. L. R. 811.

[87] C. R. I. & P. Ry. Co. v. Fuller, 186 Pac. (Kan.) 127; Scott v. Nashville Bridge Co., —— Tenn. —— (June 22, 1920).

[88] Scott v. Nashville Bridge Co., *ibid;* see also Borgnis v. Falk Co., 147 Wis. 327, 2 N. C. C. A. 834.

the English Act,[89] and under the Illinois Act it has been held that non-resident alien dependents are entitled to compensation under the law, for injuries sustained in Illinois, although it may be said that economically the State of Illinois is not interested in preventing indigence or poverty among alien dependents residing abroad. But in considering this matter in connection with resident alien dependents the Illinois Supreme Court has said: "The general welfare of the people of the State, or citizens of the State, might well be promoted by providing compensation for accidental injuries or death suffered by aliens, as well as citizens, in the course of employment within the State. There are many alien employees within the State to whom the Act should apply, and we can perceive no reason why it should not apply to them as well as to citizens. In many cases those depending upon them reside within the State, and the people or citizens of the State would be interested in not having aliens, as well as citizens, become charges upon the community by reason of injuries received in the course of employment."[90]

This decision is in line with decisions of the same court under the Act of 1853, giving a right of action for death by wrongful act, for the benefit of the widow and next of kin of the deceased, and under the Mining Act of 1899, giving a right of action for death. It is held that both these statutes extend such right to the widow and next of kin of an alien, even though such widow and next of kin are themselves non-resident aliens, it being declared that neither citizenship nor residence is requisite to entitle a person to sue in the courts of Illinois.[91] Opening the courts of the State to non-resident aliens for the redress of wrongs, however, is quite different in principle from extending the benefits of a Compensation Act, enacted for the betterment of economic conditions in this

[89] Baird v. Savage, (1906), 8 F. 438, 43 S. L. R. 300.

[90] Victor Chemical Co. v. Industrial Board, 274 Ill. 11, 13 N. C. C. A. 552, 14 *Id.* 126, 777, 434.

[91] Kellyville Coal Co. v. Petraytis, 195 Ill. 215, 8 Ill. Notes, 105, § 107; Guianios v. DeCamp Coal Co., 242 Ill. 278.

State, to dependent aliens resident in foreign countries.[92] Resident aliens have generally been held entitled to compensation for injuries, even though not expressly included by the statute in the definition of employees.[93]

Proof that alien claimants are dependent should be made by competent evidence, either direct or of such a character that a legitimate inference of dependency may be drawn.[94] And that such alien dependents are living is a question of fact which must be established by the evidence, and any presumption that may arise from the fact that the deceased left dependents living in the foreign country before he came to this country several years before, the accident, is not sufficient to prove that the alleged dependents are still living.[95]

§ 112. Minors "legally permitted to work." Minors under the age of fourteen years, are not permitted to work in Illinois at any gainful occupation, during any time when the public schools are in session, and under this age, they are not permitted to work at any time "in any theatre, concert hall or place of amusement where intoxicating liquors are sold or in any mercantile institution, store, office, hotel, laundry, manufacturing establishment, bowling alley, passenger or freight elevator, factory or workshop or as a messenger or driver therefor."[96] Dangerous employments generally are prohibited to children, under the age of sixteen years[97] and in other employments they are permitted to be employed under the age of sixteen, under certain prescribed regulations.[98] Minors legally permitted to work under the laws of the State are given "the same power to contract, receive payments and give quittances therefor, as adult employees." The legislature may declare a minor of full age, for the purpose of making contracts.[99]

92 See Maiorano v. B. & O. R. R. Co., 213 U. S. 268, 13 Cyc. 316.

93 Southwestern Surety Co. v. Vickstrom, 203 S. W. (Tex.) 389, 16 N. C. C. A. 225.

94 In re Derinza, 118 N. E. (Mass.) 942, 16 N. C. C. A. 87, 210, 809.

95 Keystone Steel & Wire Co. v. Industrial Commission, 289 Ill. 587.

96 Hurd's Rev. Stat., Chap. 48, § 20.

97 *Ibid*, § 20j.

98 *Ibid*, § 20a, *et seq.*

99 Dickens v. Carr, 84 Mo. 658.

Under the provisions of the compensation law extending the application of the law to minors legally employed, the law is as binding upon minors as upon adults and the compensation provided in the law is the full measure of the rights of a minor employee for any injuries sustained in the employment. Such legislation is not unconstitutional as to minors.[1]

The compensation laws generally provide that they shall apply only to minors legally employed and in such cases it is generally held that not only must the minor, at the time of the accident, be engaged in work which he is legally permitted to do, but that the employment itself must also be legal.[2]

And it has also been held that the Act applied only to minors legally employed, even though the statute did not expressly so provide,[3] and if the minor was illegally employed he may sue at common law for injuries sustained.[4]

It is held that the employment of a child under the prescribed minimum being forbidden by the law, the child cannot, under the statute, lawfully consent to take employment, nor can the employer, by such a void contract of employment, limit his liability for injuries to such child to the benefits fixed by the Compensation Act, to which the child was incapable of giving its consent.[5]

It has been said that to insist that a minor illegally employed is deprived of his common law rights and must look to the Compensation Act for relief would be to nullify the provisions of the labor law and to disregard the public policy of the State.[6]

It has been held in Michigan, however, that the words

1 Young v. Sterling Leather Co., 102 Atl. (N. J.) 395, 15 N. C. C. A. 724; Scott v. Nashville Bridge Co., —— Tenn. ——, (June 22, 1920); Borgnis v. Falk, 147 Wis. 327, 2 N. C. C. A. 834.

2 Moll v. Industrial Commission, 288 Ill. 347; Acklin Stamping Co. v. Kutz, 120 N. E. (Ohio) 229, 17 N. C. C. A. 607; Waterman Lumber Co. v. Beatty, 204 S. W. (Tex.) 448, 17 N. C. C. A. 614.

3 New Albany Box & Basket Co. v. Davidson, 125 N. E. (Ind. App.) 904.

4 *Ibid.*

5 Seechlich v. Harris-Emery Co., 169 N. W. (Iowa) 325, 17 N. C. C. A. 607, 611.

6 Wolfe v. Fulton Bag & Cotton Mills, 173 N. Y. Supp. 75, 17 N. C. C. A. 616.

"minors who are legally permitted to work under the laws of the State" refer only to the work being performed at the time the accident happens and do not refer to illegal employment generally.[7]

And in Wisconsin it is held that, where a minor is employed without the permit which the statute requires, compensation may still be recoverable with a penalty in the amount of three times the compensation otherwise payable.[8] It, therefore, follows that where the minor is illegally employed or is engaged in work prohibited by the statute and is, on that account, not covered by the Compensation Act and not limited to its benefits for injury sustained, he may sue at common law for such injury.[9]

It has been held, however, that the fact that the employee was employed in violation of the provisions of the labor law relating to minors is no defense to the payment of compensation by either the employer or the insurance carrier.[10]

§ 113. Agents and salesmen, whether working on a salary or on commission, have been held to be "employees."[11] For example, a solicitor and collector for a life insurance company, fatally injured by a street car when running across the street for the purpose of board-

[7] Kruczkowsky v. Polonia Pub. Co., 168 N. W. (Mich.) 932, 17 N. C. C. A. 611.

[8] Brenner v. Heruben, 176 N. W. (Wis.) 228; Lutz v. Wilmann's Bros. Co., 164 N. W. (Wis.) 1002, 15 N. C. C. A. 731.

[9] New Albany Box & Basket Co. v. Davidson, 125 N. E. (Ind. App.) 904; Westerland Lund v. Kettle River Co., 162 N. W. (Minn.) 680, 15 N. C. C. A. 720; and cases cited in Note 84.

[10] Ide v. Faul & Timmins, 166 N. Y. Supp. 858, 15 N. C. C. A. 730; Robilotte v. Bartholdi Realty Co., 172 N. Y. Supp. 328, 17 N. C. C. A. 616.

[11] Friedman Mfg. Co. v. Industrial Commission, 284 Ill. 554, 17 N. C. C. A. 1062; Chicago Packing Co. v. Industrial Board, 282 Ill. 497, 16 N. C. C. A. 696; 17 *Id.* 261; Heinze v. Industrial Commission, 288 Ill. 342; Moran's Case, 125 N. E. (Mass.) 591; In re Raynes, 118 N. E. (Ind. App.) 387, 16 N. C. C. A. 909; Crosby v. Thorpe-Hawley Co., 172 N. W. (Mich.) 535; Fowley v. Home Rubber Co., 99 Atl. (N. J.) 624, 16 N. C. C. A. 886; L. & L. Indemnity Co. v. Industrial Acc. Com., 170 Pac. (Cal.) 1074, 16 N. C. C. A. 909; Palmer v. Vansandvordt, 153 N. Y. 612; Matter of Fitzgerald, 21 Misc. (N. Y.) 226; Matter of Luxton, 35 N. Y. App. Div. 243; Matter of Ginsburg, 27 Misc. (N. Y.) 745; In re Smith, 59 N. Y. Supp. 799.

ing a car, was held injured in the course of his employment;[12] and a salesman and collector, while out on the road collecting accounts for his employer, who was struck by an automobile;[13] and where an insurance agent, traveling about on business for his employer, slips on the ice;[14] where a salesman is stricken with paralysis as the result of over-exertion running to catch a train while carrying heavy hand baggage used by him in his work;[15] where a traveling salesman driving an automobile went over an embankment into a pond and was drowned;[16] where an agent for a commission merchant, while visiting a customer, slipped on a runway at the door of the customer's place, fracturing his knee cap;[17] and where a messenger boy, while running an errand for his employer, is struck by a train.[18]

An employee, whose duty it was to assist in assembling and installing machinery and to travel around from place to place for his employer, went in an automobile with a friend to the place where certain installation work was to be done and on the journey the automobile turned over and he was injured, and compensation was awarded.[19] But where such agent or salesman is working under such terms as that his status would be that of a broker or independent contractor, he would not be an employee, but the doing of casual work for third persons would not be sufficient to determine a man's status as a broker or independent contractor.[20]

It has been held that the dependents of a salesman sent abroad on the employer's business, killed by torpedoing

[12] Moran's Case, 125 N. E. (Mass.) 591.

[13] In re Raynes, 118 N. E. (Ind. App.) 387, 16 N. C. C. A. 909; Bachman v. Waterman, 121 N. E. (Ind.) 8, 17 N. C. C. A. 956.

[14] In re Harraden, 118 N. E. (Ind. App.) 142, 15 N. C. C. A. 230.

[15] Crosby v. Thorpe-Hawley Co., 172 N. W. (Mich.) 535.

[16] Friedman Mfg. Co. v. Industrial Commission, 284 Ill. 554, 17 N. C. C. A. 1062.

[17] Heinze v. Industrial Commission, 288 Ill. 342.

[18] Chicago Packing Co. v. Industrial Board, 282 Ill. 497, 16 N. C. C. A. 696; 17 *Id.* 261.

[19] L. & L. Indemnity Co. v. Industrial Accident Com., 170 Pac. (Cal.) 1074, 16 N. C. C. A. 909.

[20] See authorities cited under "Independent Contractors," *ante*, §§ 104, 105.

of the Lusitania by a German submarine, are entitled to compensation.[21]

§ 114. Casual employments. The English Act and many American compensation laws expressly exclude casual employments. The language of exclusion in the English Act is "whose employment is of a casual nature."[22] The language of the original Illinois Act was "not including any person whose employment is but casual *or* who is not engaged in the usual course of the trade, business, profession or occupation of his employer." In the English Act the conjunction *and* is used instead of the disjunctive *or* in the Illinois Act. Where the provision follows the language of the English Act, it must appear that the employee was engaged not only casually but also not in the usual course of the employer's business.[23] On the other hand where the language of this early Illinois Act is used, proof of either casual employment, or employment not in the usual course of the employer's business, will bring the case within the exception, so that compensation will not be payable.[24] And it is held that the word "or" in the Act cannot be construed to mean "and," as the context does not require it.[25]

While casual employments, by reason of an amendment to the Act, are now no longer excluded from the Illinois Act, the Supreme Court under the former Act defined a casual employment as follows: "It would seem that the legislature intended the word 'casual' to be used as meaning 'occasional,' 'irregular' or 'incidental,' in contradistinction from stated or regular. Each case, however, must be decided quite largely upon its special facts."[26] And it has been said that the word "casual" in the statute has reference to the contract of service, and not to the particular item of work being

[21] Foley v. Home Rubber Co., 99 Atl. (N. J.) 624, 16 N. C. C. A. 886.

[22] 6 Edw. VII, Chap. 58, § 13.

[23] Walker v. Industrial Accident Commission, 171 Pac. (Cal.) 954.

[24] Aurora Brewing Co. v. Industrial Board, 277 Ill. 142, 14 N. C. C. A. 99; 15 *Id.* 802.

[25] *Ibid.*

[26] *Ibid.*

done at the time of the injury.[27] That the employment was casual is a matter of defense, and the claimant is not obliged to negative the fact in his case in chief.[28]

The mere fact that an employment is for but one job does not necessarily make the employment casual; and where no proof is offered showing how long the work lasted, it will not be assumed that its duration was for such a short period as to make the employment casual.[29]

Construing similar language in the Massachusetts Act, the Supreme Court of that State held that a waiter employed by a caterer to serve at a particular banquet only was a casual employee and not entitled to compensation. The language of the Massachusetts Act is: "Not including any person whose employment is but casual or who is not engaged in the usual course of the business" of the employer. The language of the English Act, as already pointed out, is: "of a casual nature." The Massachusetts court, in discussing this difference in the language of the two Acts, said: "The phrase of our Act tends to indicate that the contract of service is the thing to be analyzed in order to determine whether it be casual, while in the English Act, the nature of the service rendered is the decisive test."[30]

§ 115. Illustrative cases of casual employment. A person who stays at a livery stable and is occasionally employed to make trips when the regular employees are not available, for which service he receives a present of the money earned on the trip, and is not on the payroll of the employer, is engaged in a casual employment.[31]

And where a laborer was hired to do a particular piece

[27] Scully v. Industrial Commission, 284 Ill. 571; Aurora Brewing Co. v. Industrial Board, 277 Ill. 142; Holmen Creamery Assn. v. Industrial Commission, 167 N. W. (Wis.) 808, 15 N. C. C. A. 806; McNally v. Diamond Mills Paper Co., 164 N. Y. Supp. 793, 16 N. C. C. A. 639; 17 *Id.* 690.

[28] Victor Chemical Co. v. Industrial Board, 274 Ill. 11, 13 N. C. C. A. 552; 14 *Id.* 26, 777, 434.

[29] American Steel Founderies v. Industrial Board, 284 Ill. 99, 16 N. C. C. A. 686; 17 *Id.* 701.

[30] Gaynor v. Standard Acc. Ins. Co., 104 N. E. (Mass.) 339; see also In re Gillen, 215 Mass. 96; Dewhurst v. Mather, (1908), 2 K. B. 754.

[31] Diamond Livery v. Industrial Commission, 289 Ill. 591.

of work connected with the operation of an oil well, with the understanding that the work would not require but a few weeks, it was held that the employment was casual.[32]

And where a teaming company hires a person as an extra helper for no definite time and without any intention on the part of either employer or employee that the employment shall be permanent, and the employee, who was a carpenter by trade, testified that he understood the employment was a "pick-up job," the employment was held to be casual.[33]

The employment by a railroad company of a structural iron worker for a few days' work on a driveway being constructed from a public viaduct to the company's freight house is a casual employment.[34]

Where a sixteen year old boy, who had been seen occasionally driving a wagon for a storage company, was killed by the kick of a horse in the barns of the company on the morning of the day on which he was promised a "steady job" by a member of the firm, it was held that the mere fact that he was found injured on the company's place of business was not proof of the fact that he had begun his regular employment and that the employment was not casual.[35]

Where one working for another offers to repair a roof for the employer and leaves his regular job temporarily for that purpose, he is held to be a casual employer.[36]

A farmer engaged a neighbor farmer to help him put slate on the roof of his barn and the staging gave way and he was injured. It was held that this was incidental to the business of farming and not carpentry work and that the employment was casual.[37]

[32] Consumers Metal Oil Producing Co. v. Industrial Com, 289 Ill. 423.

[33] Thede Bros. v. Industrial Commission, 285 Ill. 483.

[34] See G. W. R. Co. v. Industrial Commission, 284 Ill. 573, 17 N. C. C. A. 255.

[35] Baer's Express Co. v. Industrial Board, 282 Ill. 44, 17 N. C. C. A. 258, 259.

[36] Bedard v. Sweinhart, 172 N. W. (Iowa) 937.

[37] Coleman v. Bartholomew, 175 App. Div. (N. Y.) 122, 16 N. C. C. A. 601, 644. See also Kaurie v. Messner, 164 N. E. (Mich.) 537, 17 N. C. C. A. 466.

A teamster employed by a township on a dirt road for the purpose of plowing and grading was called upon to assist in dynamiting a few stumps which took but a few hours. It was held that this latter employment was casual. It was said: "The legislature never intended an employee, who was engaged for one job lasting only three or four days, to be within the terms of the Workmen's Compensation Act," and that a contract of service was the thing to be analyzed in order to determine whether it was casual.[38]

It has been held that a carpenter who is employed by the owner of a store to put in some shelves is a casual employee;[39] and a workman who temporarily exchanges jobs with another workman is held to have severed his regular employment and taken himself out from under the protection of the Act.[40]

The following English cases have also been held to be cases of casual employment: A window cleaner was employed, at irregular intervals, to clean the windows of a dwelling house, during a period of years, when required;[41] also, where a window cleaner was in the habit of coming about once a month, but it was shown that no formal contract existed, but when he called, he was admitted and did the work, although the employer might have employed anyone else, at any time, or refused admission to the claimant.[42] A carpenter was employed to make some repairs to a private house. While these repairs were in progress, he agreed with the employer that when he finished the repairs to the house he would cut down some trees in the grounds near the house. The arrangement was that the employee was to be paid for this work at the same stipulated wage received for the

[38] McLaughlin v. Industrial Board, 281 Ill. 109, 16 N. C. C. A. 677, 682. See also State, ex rel. v. District Court, 164 N. W. (Minn.) 366; Tillburg v. McCarthy, 166 N. Y. Supp. 878, 880.

[39] Giller v. Public Novelty Works, 168 N. Y. Supp. 263, 16 N. C. C. A. 644.

[40] Modoc County v. Industrial Acc. Com., 163 Pac. (Cal.) 685, 15 N. C. C. A. 280.

[41] Hill v. Begg, (1908), 2 K. B. 802, 1 B. W. C. C. 320.

[42] Rennie v. Reid, (1908), S. C. 1051, 1 B. W. C. C. 324.

repairs. Two or three of the trees had been cut down by other men, while the claimant was engaged in the repair work. When he finished the repairs, he started to cut the remaining trees, and on the fourth day of such work, he fell from a ladder and was killed. The employment was held to be casual. Some stress was laid upon the fact, however, that it had nothing to do with the employer's "trade or business."[43]

A laborer owned a small garden surrounded by a hedge and land belonging to a farmer. He complained to the farmer that the hedge had grown so high that it cast shade across his garden, and requested him to cut it. The farmer being too busy told the man to cut it himself, for which he would pay him 10s. The long wood from the hedge was to be used for hop poles for the farmer. The man injured his eye while cutting the hedge. The court found that the employment was of a casual nature, *but that it was for the purposes of the farmer's trade or business,* and awarded compensation.[44] Compensation was also awarded in the case of a woman who was employed to work at a private house on Friday of every week, and on Tuesday in alternate weeks, the court holding that this was not a casual employment.[45]

In the following American cases, the employment was held not to be casual:

The employment of a person to drive a motor truck from December 1st until December 24th for a mercantile establishment at a weekly wage, although injured after working only a half a day and before he was put on the payroll, is not a casual employment.[46] The employment of a plumber by an employer engaged in the plumbing business, such employment being at a fixed rate of wages and to continue as long as the plumbing company has work to do.[47] And it is held that an employer primarily engaged in business as a wholesale and retail butcher,

[43] McCarthy v. Norcott, (1908), 43 Ir. L. T. 17, 2 B. W. C. C. 279.

[44] Tombs v. Bomford, 106 L. T. 823, 5 B. W. C. C. 338.

[45] Dewhurst v. Mather, (1908), 2 K. B. 754; 1 B. W. C. C. 328.

[46] Marshall Field & Co. v. Industrial Commission, 285 Ill. 333.

[47] Johnson v. Choate, 284 Ill. 214.

but who constantly employs six or seven carpenters, cannot claim that they are casual employees.[48] And where an employee was put to work "on trial," he was held an employee entitled to compensation.[49]

§ 116. Cases of employment expressly excluded by the Illinois Act. There are two classes of cases expressly excluded by the terms of Section 5 of the Illinois Act from the definition of "employees," viz.:

(1) Those who are "not engaged in the usual course of the trade, business, profession or occupation" of the employer, and

(2) Those excluded by the laws of the United States.

§ 117. (1.) Usual course of trade, business, etc. It is scarcely possible to define in the abstract the terms "trade, business, profession or occupation." They are clearly not synonymous. A farmer, for instance, does not carry on a trade,[50] although he has been held to be carrying on a business.[51] On the other hand, in the ordinary significations of the terms "profession or occupation," they do not necessarily include alone the serious purposes of life, but may extend to mere pastimes and unremunerative employments. The language of this section should be construed in the light of the general classification of the Act, and when this is done it would seem clear that the intention was to refer to business enterprises only, and not to mere hobbies or pastimes.

The Appellate Court of Illinois, has quoted approvingly from the Supreme Court of Alabama defining the word "business" as follows: "The term 'business' in common parlance, means that employment which occupies the time, attention and labor."[52] It is generally held, however, that it must be for the purpose of livelihood or profit.[53] It has been said that the word "business" means the habitual or regular occupation that a

[48] Miller & Lux v. Industrial Acc. Com., 162 Pac. (Cal.) 651, 14 N. C. C. A. 1086; 15 *Id.* 811.

[49] Muller v. Oelkers Mfg. Co., 36 N. J. L. J. 117.

[50] Tombs v. Bomford, 106 L. T. 823, 5 B. W. C. C. 338.

[51] Dewhurst v. Mather, (1908), 2 K. B. 754, 1 B. W. C. C. 328.

[52] Adam v. Mussen, 37 Ill. App. 501, 503, 9 Ill. Notes, p. 586, § 300.

[53] Abee v. State, 90 Ala. 631, 633.

person is engaged in with a view to winning a livelihood or some gain, and if livelihood and gain are eliminated it is no longer business but amusement.[54] In a Minnesota case it was said that a person's trade or profession generally refers to that branch of the world's activities wherein a person expends his usual everyday efforts to gain a livelihood.[55]

For example, it has been held that a city in constructings sewers in its corporate capacity is not engaged in business for gain or profit.[56] And a farmer, who for a short period engages in ice cutting as incidental to the conduct of his farm, is not engaged in the business of ice cutting for pecuniary gain.[57]

But it has been held, on the other hand, that it is not absolutely essential that profit or pecuniary gain must be the purpose in the carrying on the business, much less that profit should in fact result.[58] A person who occupied a residence, where he carried on farming and market gardening for his pleasure, and made a profit out of selling the surplus produce, after supplying his household wants, was held not to be carrying on a "trade or business" within the meaning of the English Bankruptcy Act of 1888.[59] But it seems it would have been held otherwise, had he farmed with a view to a profit as a means of livelihood.[60] In Ireland, a retired doctor farmed some 215 acres for profit. The swaying of some trees shook the roots, and thereby injured an adjoining wall. He employed a man casually to trim the trees. It was held that the employment was for the purpose of the employer's trade or business.[61] It has also been held in Ireland that a man casually employed

[54] Marsh v. Groner, 102 Atl. (Pa.) 127.

[55] State ex rel. v. District Court, 164 N. W. (Minn.) 366.

[56] Redfern v. Eby & City of Anthony, 170 Pac. (Kan.) 800, 16 N. C. C. A. 667.

[57] Mullen v. Little, 173 N. Y. Supp. 578.

[58] See In re Duty on Est. Incorporated Council, etc., (1888), 22 Q. B. D. 279, 294; Uhl v. Hartwood Club, 163 N. Y. Supp. 744, 15 N. C. C. A. 771; Claremont Country Club v. Industrial Accident Commission, 163 Pac. (Cal.) 209, 15 N. C. C. A. 447.

[59] In re Wallis, *ex parte* Sully, (1885), 14 Q. B. D. 950.

[60] *Ibid.*

[61] Cotter v. Johnson, 45 Ir. L. T. 259, 5 B. W. C. C. 568.

to assist a slater who was repairing the roof of the employer's business house, was still engaged for the purposes of the employer's trade, and therefore entitled to compensation. The contrary has been held in the Court of Session, where it was decided that the fact that some of the windows cleaned by a casual worker were windows of the surgery of a doctor's house, did not make the employment one for the purposes of the doctor's business.[62]

There is some conflict in the authorities as to whether the making of additions or repairs in buildings or equipment used by the employer in the conduct of the business, and workmen hired to make such additions or repairs, are in the usual course of the employer's business, within the meaning of the law. In New York it was held that an employer who was engaged in the hazardous business of manufacturing paper, was not liable to pay compensation to a workman hired to install a machine, because the employer could not be said to be engaged in the business of installing machinery.[63] Also, where a lithographing and printing company employed a bricklayer, especially to point up one of the walls of the building wherein the business of the employer was conducted it was held that an accident to the bricklayer did not arise out of and in the usual course of the employer's business which was lithographing and printing.[64] Again it was held in Vermont that where a creamery company employed a contractor to erect a building for it, that the creamery company was not engaged in the building business so as to make it liable to the workman of the building contractor.[65] Also, a carpenter who was hired by a laundry company to do some carpentry work for a stockholder of the company was

[62] Rennie v. Reid, (1908), S. C. 1051, 45 S. L. R. 814, 1 B. W. C. C. 324.

[63] McNally v. Diamond Mills Paper Co., 164 N. Y. Supp. 793.

[64] Does v. Moehle Lithographic Co., 165 N. Y. Supp. 1014, 16 N. C. C. A. 633.

[65] Packett v. Moretown Creamery Co., 99 Atl. (Ver.) 638, 14 N. C. C. A. 136; 15 *Id.* 500.

held not employed in the usual course of the employer's business.[66]

On the other hand it has been held in Indiana that where the owner and operator of a mill employed a man to repair the mill by placing tin siding on it, that such repairs were a necessary part of the milling business, which the owner was required to anticipate when the necessities of his business required it, and that therefore the employee was engaged in the usual course of the trade or business of the employer.[67] And where an employer engaged in the lumber and building business, decided to enlarge the business by adding thereto coal and other fuel, and for that purpose employed a workman to help build a shed in which to store a supply of coal for the trade, it was held that while the employer was not engaged in the business of a building contractor, the construction of the shed was in pursuance of the established business, and should therefore be held to be within the usual course of the employer's business.[68] Again, where an employee was a mechanic, and conducted a small shop, and was employed by the employer to erect a smoke stack at his plant, and was told to get what help he needed in addition to two men assigned to him by the employer, it was held that he was engaged in the usual course of the employer's business as an employee.[69] And the erection of a silo has been held incidental to the farmer's business, and therefore in the usual course of the employer's business.[70]

An employer was engaged in the retail sale and delivery of coal and other fuel. One of his wagons loaded with coal for delivery to a purchaser became mired, and

[66] LaGrande Laundry Co. v. Pillsbury, 161 Pac. (Cal.) 988, 15 N. C. C. A. 809.

[67] Caca v. Woodruff, 123 N. E. (Ind. App.) 120.

[68] State ex rel. Lundgren v. District Ct. of Wash. County, 169 N. W. (Minn.) 488.

[69] Cummings v. Underwood Silk Fabric Co., 171 N. Y. Supp. 1046, 17 N. C. C. A. 685.

[70] Globe Indemnity Co. v. Industrial Accident Commission, 187 Pac. (Cal.) 452, 16 N. C. C. A. 903. See also Holmen Creamery Co. v. Industrial Commission, 167 N. W. (Wis.) 808, 15 N. C. C. A. 806; Gross & Bros. v. Industrial Commission, 167 N. W. (Wis.) 809, 15 N. C. C. A. 813.

the team hitched thereto was unable to move it. The driver in charge thereof requested plaintiff, who was passing at the time, to assist in releasing the wagon, which he did, and while doing so was injured. It was held that while his work was casual in its nature, it was within the usual course of the employer's business, and that therefore compensation should be awarded.[71] The vice of this decision seems to be that it assumes the existence of the relation of master and servant, which did not exist, and which the driver of the wagon had no authority to create on behalf of his employer.

In the following cases, the workman was held not to be engaged in the usual course of the employer's business: Where a carpenter was employed to work for day wages, on a house to be occupied by the employer and his family; but the Industrial Accident Commission having found that the work was not "casual" it was held that an award would not be disturbed, the statute exempting only those who are employed both casually *and* in the usual course of the employer's business.[72] Where a ranchman got a railroad section hand to help him put out a fire on the ranch.[73] An employee of an employer engaged in buying and transporting grain, where it was shown to be the custom of the seller of the grain to load it, the accident happening during the loading of the grain.[74] It has also been held in California, that the mere owning and renting of a house or houses for the purpose of investment, even though such owner has no particular or principal business, is not a "business" within the meaning of the Act.[75]

It has been said that if the enterprise is of an exceptional or casual nature, it is not within the usual course

71 State ex rel. Nienaber v. District Ct. of Ramsey County, 165 N. W. (Minn.) 268, 15 N. C. C. A. 450.

72 Armstrong v. Industrial Accident Commission, 171 Pac. (Cal.) 321.

73 London & L. G. & A. Co. v. Industrial Accident Commission, 161 Pac. (Cal.) 2.

74 Carter v. Industrial Accident Commission, 168 Pac. (Cal.) 1065, 15 N. C. C. A. 812.

75 Lanzier v. Industrial Accident Commission, 185 Pac. (Cal.) 870.

of the employer's business, so as to come within the purview of the law.[76]

§ 118. (2.) Employees excluded by the laws of the United States. The section under consideration expressly provides as follows: "that employees shall not be included within the provisions of this Act when excluded by the laws of the United States relating to liability of employers to their employees for personal injuries where such laws are held to be exclusive."

The obvious purpose of this provision was to guard against the possibility of a claim being made that this statute was an attempt by the state legislature to regulate matters over which Congress or the Federal courts had exclusive jurisdiction and control under the constitution and laws of the United States.

§ 119. Admiralty cases.[77] The Federal Constitution defines the Admiralty jurisdiction of the Federal courts, and Section 9 of the Judiciary Act of 1789 confers upon the District Courts of the United States exclusive cognizance of all civil causes of admiralty and maritime jurisdiction. It has therefore been held that all cases of admiralty and maritime jurisdiction are excluded from the operation of State Workmen's Compensation Laws.[78]

§ 120. Interstate commerce cases. Under the Commerce Clause of the Federal Constitution, Congress has exclusive jurisdiction over interstate commerce, and those engaged therein. At the present time there is no Federal Workmen's Compensation Law, except the Act of May 30, 1908, referring only to certain government employees.[79] The courts have held, however, that the rights of employees of common carriers, engaged in interstate commerce, are exclusively controlled by the Federal Employer's Liability Law, unless the work performed by

[76] Morris v. Muldoon, 177 N. Y. Supp. 673.

[77] See § 78, *ante*.

[78] Knickerbocker Ice Co. v. Stewart, 15 U. S. Sup. Ct. Av. Op. 1919-20, p. 526 (May 17, 1920); So. Pac. Co. v. Jensen, 244 U. S. 205, 14 N. C. C. A. 597, 725; Clyde Steamship Co. v. Walker, 244 U. S. 255, 14 N. C. C. A. 598.

[79] See *ante*, § 5.

such employees is strictly intrastate in its character. If the duties of the employee involve going from one state to another, in the transaction of the employer's business as a common carrier, or involve work upon articles used in such interstate business, the decisions hold that his rights with reference to claims for personal injuries received, are controlled by the Federal law.

For example, the Supreme Court of the United States has held that an employee who was injured by a train engaged in interstate commerce, while he was carrying a sack of bolts or rivets along the company's right of way, to a bridge over which the company's trains were run, such bolts to be used in work being done on the bridge, was an employee engaged in interstate commerce, and covered by the Federal law.[80]

In another case it was held that an employee engaged in repairing a car, which car had become an instrumentality of interstate commerce, and was injured while doing such work, was covered by the Federal Employers' Liability Law.[81]

In like manner it has been held that workman repairing a bridge, is engaged in work on one of the instrumentalities of interstate commerce, and his rights therefore fixed by the Federal Employers' Liability Law.[82]

Also, it has been held that the mining of coal wherewith to run interstate locomotives, is an act of interstate commerce.[83]

On the other hand it has been held that putting steel rails into a pit for storage, between the tracks of an interstate road at one of its terminals is not an act of interstate commerce, the court holding that "the actual employment or use at the moment of injury of the thing upon which the person injured was working, is the test of applicability of the statute.[84]

[80] Pederson v. D. L. & W. Ry. Co., 33 Sup. Ct. Rep. 648.

[81] Northern Pac. Ry. Co. v. Maerkl, 198 Fed. 1.

[82] Thompson v. Columbia & P. S. R. Co., 205 Fed. 203.

[83] Delaware, etc., Co. v. Yurkonis, 238 U. S. 444.

[84] Hudson & Manhattan Railroad Co. v. Iorio, 239 Fed. 855.

Not every employee of an interstate carrier is engaged in interstate commerce, but to be so employed the work of the employee must constitute a substantial part of interstate commerce in which the carrier is engaged.[85] Mere expectation that the employee will be called upon to perform a task of interstate commerce is not sufficient.[86]

The Supreme Court of Illinois said that "it is the employment that determines whether or not the injury to the employee is within the purview of that (Federal Employers' Liability) Act, and not the act of the employee just at the time of his injury."[87] In an earlier case, however, the same court, quoting from the *Pedersen* case,[88] said: "The true test is the nature of the work being done at the time of the injury."[89]

The rule as to workmen employed on an engine which is used at times in both interstate and intrastate traffic is well stated by the United States Supreme Court thus: "An engine, as such, is not permanently devoted to any kind of traffic and it does not appear that this engine was destined especially for anything more definite than such business that it might be needed for. It was not interrupted in an interstate haul to be repaired and go on. It simply had finished interstate business and had not yet begun upon any other. Its next work, so far as appears, might be interstate or confined to Iowa, as it should happen. At the moment it was not engaged in either. Its character as an instrument of commerce depended upon its employment at the time and not upon remote possibilities or upon accidental later events."[90]

If a business carried on by an employer is at times interstate and at others intrastate, and such operations are separable, the business which is clearly intrastate will be covered by the compensation law.[91]

[85] Guida v. Pa. R. R. Co., 171 N. Y. Supp. 285; C. & A. R. R. Co. v. Industrial Commission, 290 Ill. 599; Dickinson v. Industrial Board, 280 Ill. 342, 16 N. C. C. A. 888; 17 *Id.* 154.

[86] *Ibid.*

[87] Jackson v. Industrial Board, 280 Ill. 526, 533, 17 N. C. C. A. 157.

[88] 33 Supreme Court Reporter, 648.

[89] C. R. I. & P. Ry. Co. v. Industrial Board, 273 Ill. 528, 531.

[90] Minneapolis & St. Louis R. R. Co. v. Winters, 242 U. S. 363.

[91] Suttle v. Hope Natural Gas Co.,

§ 121. Illustrative interstate cases. The following cases were held to involve interstate transactions and not within the state compensation law:

An injury to a member of a switching crew caused by falling from the engine as it was running light from one part of the yard to another, where the engine had just moved a string of cars, some of which were interstate, and was on its direct way to get another string of cars also containing some used in interstate commerce;[92] an employee engaged in repairing an air hose on an interstate train;[93] cleaning a car which had not yet finished an interstate journey;[94] an engineer in charge of the switching engine used in both interstate and intrastate commerce, who is injured while crossing the tracks at the close of his day's work;[95] and a section laborer working on interstate tracks;[96] and a crossing flagman struck by an automobile while going across the tracks to flag a train, some cars of which were loaded with interstate shipments;[97] a flagman struck and killed by an interstate train;[98] an employee injured by tripping over a semaphore wire strung along an interstate track;[99] where an employee was engaged as a "coal passer" on a car ferry between Wisconsin and Michigan, and was injured by a piece of falling coal while the boat was being loaded and was just about to depart on its interstate trip;[1] and repairing pipes which constituted a part of the plumbing apparatus of the maintenance of way department of an interstate railway company, it being held that such

97 S. E. (W. Va.) 429; see also Spokane & I. E. Ry. Co. v. Wilson, 176 Pac. (Wash.) 34.

92 Wangerow v. Industrial Board, 286 Ill. 441.

93 Miller v. Grand Trunk Western R. Co., 166 N. W. (Mich.) 833.

94 Kinsella v. New York Central R. Co., 175 N. Y. Supp. 363.

95 Erie R. R. Co. v. Winfield, 244 U. S. 170, 14 N. C. C. A. 957; 15 *Id.* 922.

96 New York Central R. R. Co. v. Winfield, 244 U. S. 147, 14 N. C. C. A. 680, 725.

97 Walker v. C. R. I. & P., 117 N. E. (Ind.) 969.

98 Flynn v. N. Y. S. & W. R. Co., 101 Atl. (N. J.) 1034; C. & A. R. R. Co. v. Industrial Commission, 288 Ill. 603.

99 Carey v. Grand Trunk West. Ry. Co., 166 N. W. (Mich.) 492.

1 Thornton v. Grand Trunk, Milwaukee Car Ferry Co., 166 N. W. (Mich.) 833.

maintenance of way department was a necessary instrumentality of interstate commerce.[2]

In the first edition of this work it was said:

"An interesting question arises, however, as to how far the courts will ultimately hold that Federal amendments to the existing rules of the common law, ought to be held to supersede state legislation in the nature of a new and comprehensive scheme, entirely divorced from common law principles, and based on the principle of trade risk, as opposed to the principle of fault or negligence. The laws passed by Congress are merely amendatory of the common law, and still require the employee to prove negligence on the part of the employer before he can recover. On the other hand, the compensation law offers relief in all cases of injury, whether the employer has been negligent or not; query, do the Federal and State laws cover the same field?"[3]

This question as to whether in non-negligence interstate cases the State Compensation Act might properly be applied has been considered by some of the courts. For example, the Appellate Court of Illinois has held that the Compensation Act of Illinois "does not in any manner seek to affect commerce, nor does it affect the employee while he is engaged in an act of commerce, but it is designed to provide for him while he is incapacitated by reason of injury received in the course of his employment, or in case of his death under such circumstances to provide for his immediate family or his collateral heirs dependent upon him, or, if he leaves none of these, to provide for his burial expenses. There is no good reason why each act should not operate in the field which it is designed to cover."[4] But the Supreme Court of the United States has since definitely decided that the Federal Employers' Liability Law is exclusive in all interstate cases; and if it is an interstate case the fact that

[2] Vollmers v. New York Cent. R. Co., 167 N. Y. Supp. 426.

[3] Harper on Workmen's Compensation, 1st Ed., § 117.

[4] Staley v. I. C. Ry. Co., 186 Ill. App. 593, 600; Reversed on other grounds in Staley v. I. C. R. R. Co., 268 Ill. 356, 11 N. C. C. A. 1096; see also Matney v. Bush, 169 Pac. (Kas.) 1150.

it is a non-negligence case does not operate to leave it under the jurisdiction of the State;[5] and it has properly been held that this decision of the Supreme Court of the United States settles conclusively for all American jurisdictions that employees of an interstate carrier, engaged in interstate business, are not within the jurisdiction of State Workmen's Compensation Acts, regardless of all questions of negligence.[6] And in an Illinois case it was said "in a suit to recover for an injury occurring while the employer and employee are engaged in interstate commerce, the Federal Employers' Liability Act alone applies, and cannot be pieced out or supplemented by any State statute."[7]

The following cases were held not to be interstate but within the jurisdiction of the State Compensation Act:

An express company, although its stock is all owned by a railroad company engaged in interstate commerce;[8] an employee engaged to perform the ordinary duties of a janitor in the shops of a railroad company, although the shops contained machinery for repairing engines which haul trains both in interstate and intrastate commerce;[9] a ticket agent selling tickets on an interstate road, while building a fire in a depot stove;[10] employees of a telegraph company engaged in construction work within the state;[11] where a night watchman in a railroad yard is killed by an engine of another company, while he was standing on the latter's tracks, upon the mere proof that the regular interstate freight train of his employer, which it was a part of his duty to watch to prevent theft from cars, was pulling out of the yard at the time;[12] a locomotive boiler washer, employed in a round house where engines were kept, which hauled

[5] New York Central R. R. Co. v. Winfield, 244 U. S. 147, 14 N. C. C. A. 680, 725.

[6] Carey v. Grand Trunk West. R. Co., 166 N. W. (Mich.) 492.

[7] P. C. C. & St. L. R. Co. v. Industrial Commission, 291 Ill. 396.

[8] State ex rel. Great Northern Express Co. v. District Court, 172 N. W. (Minn.) 310.

[9] Heed v. Industrial Commission, 287 Ill. 505.

[10] Benson v. Bush, 178 Pac. (Kas.) 747.

[11] State v. Postal Telegraph Cable Co., 172 Pac. (Wash.) 902.

[12] A. T. & S. F. Ry. Co. v. Industrial Commission, 290 Ill. 590.

interstate and intrastate trains, while working on an engine which had not been assigned to any particular train;[13] a night watchman in a locomotive shop of a railway company, to which dead engines were brought for repair, some of which had been engaged in interstate commerce;[14] an employee injured while building a scaffold to be used by him in painting a freight shed, which was used by a railroad company engaged in interstate commerce;[15] a janitor in the office of a railroad company, engaged for the most part in interstate commerce, injured while breaking coal with an axe for the office furnace;[16] an employee engaged in switching cars to a platform before they are designated for either interstate or intrastate shipment;[17] an employee in a railway machine shop, while pushing a car load of lumber about the shop to the place where it is to be unloaded, all of which loading and movement was within the State, although the lumber was intended for use in building and repairing cars in part for interstate traffic;[18] switching a car upon a siding after it has finished an interstate trip;[19] where cars upon which the employee was working were not transported in interstate commerce until after his death;[20] an employee of a railroad company injured while running a hand car on a private track of another, although interstate cars are sometimes run over such track;[21] or an employee engaged as a carpenter in repairing coal pockets used from time to time by locomotives employed in both interstate and intrastate traffic.[22]

It is generally held that the burden is upon the employer, where compensation is claimed under the State Act, to prove that the employee was at the time engaged

[13] C. R. I. & P. Ry. Co v. Industrial Commission, 288 Ill. 126.

[14] Wabash R. R. Co. v. Industrial Commission, 286 Ill. 194.

[15] Killes v. Great Northern Ry. Co., 161 Pac. (Wash.) 269.

[16] Great Northern Ry. Co. v. King, 161 N. W. (Wis.) 371, 14 N. C. C. A. 88.

[17] Chicago Jct. Ry. Co. v. Industrial Board, 277 Ill. 512.

[18] Barnett v. Coal & Coke Ry. Co., 94 S. E. (W. Va.) 150, 17 N. C. C. A. 513.

[19] Delavan L. & W. R. Co. v. Peck, 255 Fed. 261.

[20] Hancock v. Philadelphia & R. R. Co., 107 Atl. (Pa.) 735.

[21] Liberti v. Staten Island Ry. Co., 167 N. Y. Supp. 478.

[22] Gallagher v. New York Central R. Co., 167 N. Y. Supp. 480.

in interstate commerce.[23] But it is held in New Jersey that where the employee of a railroad company is working in connection with both interstate and intrastate commerce, it is incumbent upon the claimant for compensation to prove affirmatively that the employee was not engaged in interstate commerce, and that such fact is not to be presumed in the absence of proof.[24]

Whether one is an employee engaged in interstate commerce is a mixed question of law and fact;[25] but where the facts are undisputed a finding that an injured workman was not engaged in interstate employment is not a finding of fact but a statement of law and, as such, is subject to review in the courts.[26]

It has been held that the Board or Commission authorized by the law to try questions of fact should, in cases where a defense of interstate commerce is made, make a finding as to whether the accident occurred in interstate or intrastate commerce so that the question may be reviewed as a matter of law.[27]

The defense that the case is an interstate commerce case cannot be taken advantage of after a settlement of the claim has been made on a compensation basis. The mistake of the insurance carrier in making settlement is not such a mistake as would entitle the company to have the settlement set aside;[28] and a finding by the court that the railroad company was not engaged in interstate commerce will estop the railroad company from claiming, in a subsequent suit between the same parties, that it was engaged in such commerce.[29]

§ 122. Other cases of excluded employments—farm laborers. As already pointed out, farm laborers are ex-

[23] A. T. & S. F. Ry. Co. v. Industrial Commission, 290 Ill. 590; Fish v. Rutland R. Co., 178 N. Y. Supp. 439; I. C. R. R. Co. v. Industrial Board, 284 Ill. 267.

[24] Lincks v. Erie R. R. Co., 103 Atl. (N. J.) 176.

[25] Mooney v. Lehigh Valley R. Co., 104 Atl. (Pa.) 624.

[26] Flynn v. N. Y. S. & W. R. Co., 101 Atl. (N. J.) 1034.

[27] Brinsko's Estate v. Lehigh Valley R. Co., 102 Atl. (N. J.) 390.

[28] Bach v. Interurban Ry. Co., 171 N. W. (Ia.) 723.

[29] Jackson v. Industrial Board, 280 Ill. 526, 17 N. C. C. A. 157.

pressly excluded from the provisions of the Illinois Act, by the provisions of Section 3.[30]

§ 123. **Domestic servants** employed in the household are clearly not "employees" within the meaning of the law, for the reason that they are not "engaged in the usual course of the trade, business, profession or occupation" of the employer.

§ 124. **Extra-territorial operation.** Section 7 of the English Act provides that the Act shall apply to "masters, seamen and apprentices to the sea service, and apprentices in the sea fishing service," etc.[31] The English courts have held that with this exception, expressly stated in the statute, the Act does not apply to workmen engaged in employment abroad. For example, it has been held that the employee of a British company, engaged in the erection of certain breakwater works at Malta, was not covered by the Compensation Act, and that his dependents were not entitled to recover for his death.[32] Cozens-Hardy, M. R., said: "What is the widow's claim here? She is claiming not as a party to a contract—not claiming any rights under a contract—made by her or by any person through whom she claims. She is claiming simply the performance by the employers of a statutory duty, which statutory duty is said to be found in the Workmen's Compensation Act, 1906. That brings us face to face with this proposition, What is the ambit of this statute? What is the scope of its operation? It seems to me reasonably plain that this is a case to which the presumption which is referred to in Maxwell on the Interpretation of Statutes (4th Ed., pp. 212, 213) in the passage which has been read by Mr. Waddy, must apply. It is there stated that 'in the absence of an intention clearly expressed, or to be inferred from its language, or from the object or subject matter or history of the enactment, the presumption is that Parliament does not design its statutes to operate on them beyond the territorial limits of the United King-

[30] See § 96, *ante*.
[31] 6 Ed. VII, Chap. 58, § 7.
[32] Tomalin v. S. Pearson & Son, (1909), 2 K. B. 61, 100 L. T. 685, 2 B. W. C. C. 1.

dom.' ''[33] Also where a workman, while on his way abroad in connection with his employer's business, was drowned at sea, it was held that the employment was not covered by the Act.[34]

The earlier American Acts were generally silent upon the subject of the territorial operation of the law, but later statutes have adopted widely different provisions, some limiting the effect and operation of the law to accidents happening within the State, and others extending the operation of the law to accidents no matter where they may occur, and still others making their extra-territorial operation dependent upon certain specified conditions, as that the contract of employment must be made within the State, that employer's place of business is within the State, or the parties reside within the State, etc.[35] It now seems to be well settled that a State has power to extend the operation of a Workmen's Compensation Law to injuries sustained outside the boundaries of the State.[36]

Although the decisions are not altogether in harmony, it may be stated that according to the weight of authority Elective Acts which are held to be contractual extend to injuries sustained outside the State, where the contract of employment is made within the State,[37] while

[33] *Ibid.* See also Schwartz v. India Rubber G. P. & T. Co., (1912), 2 K. B. 299; Hicks v. Maxton, 124 L. T. Rep. 135.

[34] Schwartz v. India Rubber G. P. & T. Wks., Ltd., (1912), 5 B. W. C. C. 390, 2 K. B. 299.

[35] See Table showing Territorial Operation of American Workmen's Compensation Laws, *post*, p. 568.

[36] In re Gould, 215 Mass. 480, 102 N. E. 693, 13 N. C. C. A. 468; 15 *Id.* 923; Mulhall v. Fallon, 176 Mass. 266, 57 N. E. 386; Post v. Burger & Gohlke, 216 N. Y. 544, 111 N. E. 351, 15 N. C. C. A. 920, 925; Gooding v. Ott, 87 S. E. (W. Va.) 863, 15 N. C. C. A. 920; Foughty v. Ott, 92 S. E. (W. Va.) 143, 15 N. C. C. A. 919.

[37] State ex rel. Chambers v. District Court, 166 N. W. (Minn.) 185, 15 N. C. C. A. 922; State ex rel. Maryland Casualty Co. v. District Court, 168 N. W. (Minn.) 177, 13 N. C. C. A. 263; Gooding v. Ott, 87 S. E. (W. Va.) 863, 15 N. C. C. A. 920; Foughty v. Ott, 92 S. E. (W. Va.) 143, 15 N. C. C. A. 919; Industrial Commission v. Aetna Life Ins. Co., 174 Pac. (Col.) 589, 17 N. C. C. A. 955; Grinnell v. Wilkinson, 39 R. I. 447, 15 N. C. C. A. 921; Pierce v. Bekins Van & Storage Co., 172 N. W. (Ia.) 191; *contra*, see Illinois Bridge & Construction Co. v. Industrial Commission, 287 Ill. 396.

Compulsory Acts, or Acts held not to be contractual in character, do not, in the absence of either express provisions or language clearly indicating a contrary intention, apply to injuries sustained outside the State.[38]

The California Supreme Court in passing upon this question, under the Compulsory Law of that State said that under a Compulsory Compensation Act the correlative rights and obligations of the parties are not founded upon contract, but arise by operation of law and attach to a given status, and that it could not be said that the legislature intended to confer jurisdiction on the Industrial Accident Commission over injuries sustained beyond the limits of the State, and that without express provision in that respect the commission had no jurisdiction.[39]

The Supreme Court of Illinois, however, expressly disapproves of the reasoning of those courts which hold that an Elective Act should be given extra-territorial effect, because of its contractual features, saying: "The Compensation Act has been held, on account of its elective features, to create a contract obligation, but the obligation so created is that the employer will provide and pay compensation according to the provisions of the Act, and he does not agree to provide and pay compensation for injuries not included within the Act."[40] This view finds strong support, not only in the reasons given by the court, but also in the fundamental principles of the law that two independent political sovereignties cannot exercise legislative authority over the same place and subject at the same time, and that the laws of a sovereign state can have no effect beyond the boundaries of the State.[41] Independent of the provisions of Work-

[38] In re Gould, 215 Mass. 480, 4 N. C. C. A. 60; Boston & Me. R. R. Co. v. Trafton, 151 Mass. 229; Howarth v. Lombard, 175 Mass. 570; Young v. Boston & Me. R. R. Co., 168 Mass. 219; Cogliano v. Ferguson, 117 N. E. (Mass.) 45, 15 N. C. C. A. 923; North Alaska Salmon Co. v. Pillsbury, 162 Pac. (Cal.) 93, 15 N. C. C. A. 924; see also Gardner v. Horseheads Constr. Co., 171 App. Div. (N. Y.) 66, 15 N. C. C. A. 924; Merrill v. Boston & Lowell, 63 N. H. 256.

[39] North Alaska Salmon Co. v. Pillsbury, 162 Pac. (Cal.) 93, 15 N. C. C. A. 924.

[40] Union Bridge & Constr. Co. v. Industrial Commission, 287 Ill. 396.

[41] Black on Interpretation of

men's Compensation Laws, it has been held that a statutory obligation to pay money is a quasi-contractual obligation.[42] Such contracts, however, whether they be called statutory, constructive or quasi-contracts, are really not contract obligations at all, in the true sense, for there is in reality no agreement,[43] but they are clothed with the semblance of contract for remedial purposes.

Where the Act expressly provides that it shall cover accidents which happen outside the state, the courts of the state in which the injury occurs will give effect to the foreign law where it is not contrary to the laws or public policy of such state.[44] If the employer and employee are within the provisions of a compensation law of a foreign state, and the employee is injured in such foreign state, the courts of that state should take jurisdiction of a compensation claim arising under the statute of such foreign state, as a matter of comity, if it is possible to enforce it, and if the employer may be found within the territorial jurisdiction of the court.[45] On this general subject the Supreme Court of Illinois has said: "We think it well settled that without regard to the rule which may obtain as to a cause of action which accrued under the laws of a separate and distinct nation, a right of action which has accrued under the statute of a sister State of the Union will be enforced by the courts of another State of the Union, unless against good morals, natural justice or the general interest of the citizens of the State in which the action is brought. (Dicey on Conflict of Laws, Par. 1, pp. 667, 669.)"[46] The practical diffi-

Laws, p. 91; Lewis' Southerland Stat. Constr., §§ 13, 14.

[42] Milford v. Commonwealth, 144 Mass. 64; Wood v. Ayres, 39 Mich. 345; Woodstock v. Hancock, 62 Vt. 398; Pacific Mail Steamship Co. v. Joliffe, 2 Wall. (U. S.) 450.

[43] Rae v. Hulburt, 17 Ill. 572, 1 Ill. Notes, 651, § 472; Royal Indemnity Co. v. Platt & Washburn Ref. Co., 163 N. Y. Supp. 197, 14 N. C. C. A. 1020; 15 *Id.* 872.

[44] Post v. Burger & Gohlke, 216 N. Y. 544, 15 N. C. C. A. 920, 925; Barnhart v. American Concrete Steel Co., 125 N. E. (N. Y.) 675, 15 N. C. C. A. 874; Banks v. Howlett Co., 102 Atl. (Conn.) 822.

[45] C. & E. I. R. R. Co. v. Rouse, 178 Ill. 132, 135, 7 Ill. Notes, 905, § 46.

[46] *Ibid;* Schweitzer v. Hamburg-Am. Line, 149 App. Div. (N. Y.) 900.

culties in the way of applying this rule, however, are great, because of the fact that the methods of enforcing compensation claims are expressly provided for in the statute, and these methods must be followed, and they are usually referable only to officers or courts within the State.[47]

[47] On the general proposition of extra-territorial effect and operation, see also the following cases: Charlton v. Hilton-Dodge Tr. Co., 164 N. Y. Supp. 999; Verdichio v. McNab, etc., Mfg. Co., 164 N. Y. Supp. 290, 15 N. C. C. A. 873; Jenkins v. T. Hogan & Sons, 163 N. Y. Supp. 707, 15 N. C. C. A. 921; Douthwright v. Champlin, 100 Atl. (Conn.) 97, 14 N. C. C. A. 91, 95; 15 *Id.* 870; Hagenback v. Leppert, 117 N. E. (Ind. App.) 531, 15 N. C. C. A. 922; International Harvester Co. v. Industrial Board, 118 N. E. (Ill.) 711; Friedman v. Industrial Commission, 284 Ill. 554, 17 N. C. C. A. 1062; McManus v. Red Salmon Canning Co., 173 Pac. (Cal.) 1112; Martin v. Kennecutt, Copper Corp., 252 Fed. 207; Smith v. Heine Boiler Co., 224 N. Y. 9; Perlis v. Lederer, 178 N. Y. Supp. 449; State ex rel. v. District Court of Hennepin County, 170 N. W. (Minn.) 218; Gilbert v. Des Laurier Column Mould Co., Inc., 167 N. Y. Supp. 274, 15 N. C. C. A. 878, 926; Edwardson v. Jarvis Literage Co., 168 App. Div. (N. Y.) 368; Valentine v. Smith-Angevine Co., 168 App. Div. (N. Y.) 403, 9 N. C. C. A. 918; Kennerson v. Thames Towboat Co., 89 Conn. 367; Johnson v. Nelson, 128 Minn. 158; Foley v. Home Rubber Co., 99 Atl. (N. J.) 624, 16 N. C. C. A. 886; Spratt v. Sweeney & Gray Co., 168 App. Div. (N. Y.) 403, 9 N. C. C. A. 918; see also Table showing Territorial Operation of Compensation laws of the various States, *post*, p. 568.

CHAPTER VI

COMMON LAW AND STATUTORY REMEDIES SUPERSEDED.

Sec. 6 of the Illinois Act

§ 6. No common law or statutory right to recover damages for injury or death sustained by any employee while engaged in the line of his duty as such employee other than the compensation herein provided shall be available to any employee who is covered by the provisions of this Act, to any one wholly or partially dependent upon him, the legal representatives of his estate, or any one otherwise entitled to recover damages for such injury.

§ 125. Exclusion of other remedies. This section might properly be termed the correlative of Section 11, of the Act.[1] This section limits the rights of the employee and his dependents, to the provisions of this Act, —and Section 11 limits the responsibility of the employer to the provisions of this Act. However, it has been held under a similar statute that where the injury is caused by the employer's negligence, and is of such a character as not to impair the employee's earning ability, and is therefore not compensable, such employee may proceed against the employer as at common law.[2] This limitation of responsibility of the employer to the benefits of the Compensation Law applies to minors as well as to adults.[3]

1 § 199, *post:* Dietz v. Big Muddy Coal & Iron Co., 263 Ill. 484, 5 N. C. C. A. 419.

2 Boyer v. Crescent Paper Box Factory, Inc., 78 So. (La.) 596.

3 Young v. Sterling Leather Wks.,

This section deprives the personal representatives of any deceased employee under the Act of the right to bring suit for the benefit of the widow and next of kin, under the provisions of the Act of 1853 "requiring compensation for causing death by wrongful act, neglect or default."[4]

It also deprives miners, who are under the Act and their personal representatives of the right to bring suit under the provisions of Section 29 (c) of the Mining Act of 1911.[5] Also, the right of the employee to sue to recover for injuries under the Act of 1909, providing for the health, safety and comfort of employees[6] is taken away, and the compensation benefits substituted therefor.[7]

No right to compensation for an injury resulting in death existed at common law. Such right where it exists, has been given by statute, and being wholly statutory is subject to legislative control. It may be given upon such terms and to such extent as the legislature sees fit, and may be taken away or limited in its discretion. Even under an Elective Act, therefore, it is held that if the election is made to be governed by the Compensation Law, such election is binding upon the heirs and next of kin of the deceased workman, and that they have no vested rights in the rules of law relating to damages for causing death, which may be therefore changed by the legislature, at its pleasure.[8]

The Occupational Disease Law[9] also gives a right of

102 Atl. (N. J.) 395, 15 N. C. C. A. 724; see, however, Garfield Smelting Co. v. Industrial Commission, 178 Pac. (Utah) 57.

[4] Hurd's Rev. Stat., Chap. 70, § 1; Wangler Boiler & Sheet Metal Wks. Co. v. Industrial Commission, 287 Ill. 118; Keeran v. P. B. & C. Traction Co., 277 Ill. 413, 16 N. C. C. A. 404; Yeancey v. Taylor Coal Co., 199 Ill. App. 14, 17 N. C. C. A. 526; Shanahan v. Monarch Engraving Co., 219 N. Y. 469; Western Metal Supply Co. v. Pillsbury, 156 Pac. (Cal.) 492, 13 N. C. C. A. 544; Gray v. Brown & Sehler Co., 166 N. W. (Mich.) 930, 17 N. C. C. A. 171.

[5] Hurd's Rev. Stat., Chap. 93, §§ 1-31.

[6] Hurd's Rev. Stat., Chap. 48, § 89.

[7] Burns v. Swift & Co., 186 Ill. App. 460; but see Eldorado Coal & M. Co. v. Mariotti, 215 Fed. 51.

[8] Keeran v. P. B. & C. Traction Co., 277 Ill. 413, 16 N. C. C. A. 404.

[9] Hurd's Rev. Stat., Chap. 48, § 153.

action to employees for injury to health, proximately caused by any wilful violation of the Act, and in cases of death caused by such wilful violation, to the widow, lineal heirs or adopted children. This right is not taken away by the provisions of Section 6, except in those cases of "accidental injuries" resulting in disease, as explained in the discussion of the relation of occupational diseases to the Compensation Law.[10]

§ 126. Election of remedies. It is a well recognized general rule of law, that where two or more remedies are open to a person to right a particular wrong, the pursuit of one constitutes such an election as will preclude the person from subsequently pursuing the other.

The question arises whether an employee who elects to accept the Workmen's Compensation Act, in the manner provided therein, thereby elects one of two remedies open to him, within the meaning of the general rule above referred to, and is precluded, in all cases, from proceeding at common law, after once accepting the Act.

The English Act of 1897 provided that "the workman may, at his option, either claim compensation or take proceedings" at common law.[11] Under this Act a claim for compensation for accidental injuries was refused on the ground that the applicant had been guilty of serious and wilful misconduct, and thereafter he brought an action at common law against his employer for damages, and it was held that having elected to claim compensation under the Act, and having obtained a final judgment upon that claim, he was barred by the provisions of Section 1 (2) b. referred to from bringing his action for damages at common law.[12]

No such option is given in the Illinois Act,—on the contrary the Section which we are here considering expressly excludes any other remedy than the one given by the statute for compensation. It would therefore seem that if it be finally adjudicated that the employee

10 *Ante*, § 27.

11 6 Edw. VII, Chap. 58, § 1, (2) b.

12 Burton v. Chapel Coal Co., Ltd., (1909), S. C. 430, 46 S. L. R. 375, 2 B. W. C. C. 120.

is under the Act, he has no other remedy than that given by the statute, but, on the other hand, if it is found and determined that he is not under the Act, although he may have considered himself under it, and instituted proceedings for compensation, under such a mistaken belief, he would not be barred from proceeding in the proper common law forum.[13]

This construction is in accord with the well-known exceptions to the general rule relating to election of remedies above referred to. The Illinois Supreme Court has stated these exceptions as follows:

"The institution of a suit will not be held such a decisive Act as to constitute a waiver of rights which would be inconsistent with the maintenance of such suit, (1) if the court in which the first action is brought *has no jurisdiction* to try the cause; (2) if the cause of action is prematurely brought and is defeated for that reason; (3) if the suitor has in his first action *mistaken his remedy* and is defeated on that ground; or (4) if an action is commenced in ignorance of material facts which proffer an alternative remedy, the knowledge of which is essential to an intelligent choice of procedure."[14]

If, therefore, an employee mistakes his remedy and proceeds to claim compensation, when he is not under the Act, he would not be barred from subsequently proceeding at common law.[15]

For example, it is held that a judgment against the plaintiff in a suit brought under the Federal Employers' Liability Act is no bar to an action under the state law for the same injury, where it was determined that the

[13] Pavia v. Petroleum Iron Wks., 164 N. Y. Supp. 790.

[14] Garrett v. Farwell Co., 199 Ill. 436, 441, 8 Ill. Notes, p. 221, § 205. See also Enterprise Soap Works v. Sayers, 51 Mo. App. 310; New England Bank v. Lewis, 8 Pick. 113; Edgewood Distilling Co. v. Shannon, 60 Ark. 133; Bunch v. Grave, 111 Ind. 351; Smith v. Bricker, 86 Ia. 285; Kingsbury v. Kettle, 90 Mich. 476; McLaughlin v. Austin, 104 Mich. 489; In re Van Norman, 41 Minn. 494; Gould v. Blodgett, 61 N. H. 115; White v. Whiting, 8 Daly 23; Bowdish v. Page, 41 Hun. 170; Wells v. Robinson, 13 Cal. 133; King v. Lagrange, 50 Cal. 328; Mankin v. Mankin, 91 Ia. 406; McNutt v. Hilkins, 80 Hun. 235.

[15] Jackson v. Industrial Board, 280 Ill. 526, 17 N. C. C. A. 157; Riegel v. Higgins, 241 Fed. 718.

party injured was not engaged or employed in interstate commerce at the time of the injury.[16]

On the same principle, if he mistakes his remedy and proceeds in good faith at common law, and it is determined that the common law courts have no jurisdiction, and that the constituted authorities under the Compensation Act have jurisdiction of his claim, he would not be barred from proceeding for the recovery of compensation, provided he has complied or is able to comply with the terms of the Act with reference to notice and presentation of claim.[17]

It has been held under the English Act that there will be a concluded election, and subsequent action will be barred if the workman has claimed, or has by a valid and binding contract agreed to accept compensation under the Act, and has been paid compensation in respect thereof.[18] A mere agreement, however, without satisfaction by payment will not amount to a bar.[19] A request for arbitration, filed, but withdrawn before hearing, has been held not to amount to a concluded election, and does not constitute a bar to a subsequent action for damages.[20]

It is held in New York, that an action at common law for negligence, amounts to an election which will bar a subsequent claim for compensation,[21] but that an election by an administrator will not bar the right of individuals having claims, after failure of the administrator to proceed according to the provisions of the

16 Jackson v. Industrial Board, 280 Ill. 526, 17 N. C. C. A. 157. See also Liverani v. John T. Clark & Son, 176 N. Y. Supp. 725.

17 See § 24 of Act, *post*, Chap. XVIII, §§ 205-207, and see Blain v. Greenock Foundry Co., (1903), 5 F. 893, where a claimant under the English Act of 1897 was unsuccessful because the claimant was only partially dependent, and there were total dependents who ousted him, he was held entitled to bring a subsequent action for damages; and McDonald v. James Dunlop & Co., Ltd., (1909), 7 F. 533, 42 S. L. R. 394, approved but distinguished in Burton v. Chapel Coal Co., (1909), S. C. 430, 2 B. W. C. C. 120.

18 Campbell v. Caledonian Rail. Co., (1899), 1 F. 887, 36 S. L. R. 699; Little v. MacLellan, (1900), 2 F. 387, 37 S. L. R. 287.

19 Hawkes v. Richard Coles & Sons, (1910), 3 B. W. C. C. 163.

20 Rouse v. Dixon, (1904), 2 K. B. 628, 6 W. C. C. 44; Riegel v. Higgins, 241 Fed. 718.

21 Crinieri v. Gross, 172 N. Y. Supp. 659.

statute giving such individuals definte rights to compcompensation;[22] and it is held under the Texas Act that an employee who elects to accept compensation is held barred from proceeding against a negligent third person causing the accident.[23]

[22] In re Balais, 178 N. Y. Supp. 519.

[23] Dallas Hotel Co. v. Fox, 196 S. W. (Tex.) 647.

CHAPTER VII

COMPENSATION FOR DEATH

Sec. 7 of the Illinois Act

§ 7. The amount of compensation which shall be paid for an injury to the employee resulting in death shall be:

(a) If the employee leaves any widow, child or children whom he was under legal obligations to support at the time of his injury, a sum equal to four times the average annual earnings of the employee, but not less in any event than one thousand six hundred fifty dollars and not more in any event than three thousand five hundred dollars. Any compensation payments other than necessary medical, surgical or hospital fees or services shall be deducted in ascertaining the amount payable on death.

(b) If no amount is payable under Paragraph (a) of this section and the employee leaves any parent, husband, child or children who at the time of injury were totally dependent upon the earnings of the employee, then a sum equal to four times the average annual earnings of the em-

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ployee, but not less in any event than one thousand six hundred fifty dollars, and not more in any event than three thousand five hundred dollars.

(c) If no amount is payable under Paragraphs (a) or (b) of this section and the employee leaves any parent, child or children, grandparent or grandchild, who at the time of injury were dependent upon the earnings of the employee, then such proportion of a sum equal to four times the average annual earnings of the employee as such dependency bears to total dependency, but not less in any event than one thousand six hundred fifty dollars and not more in any event than three thousand five hundred dollars. Any compensation payments other than necessary medical, surgical or hospital fees or services shall be deducted in ascertaining the amounts payable on death.

(d) If no amount is payable under Paragraphs (a), (b) or (c) of this section and the employee leaves collateral heirs dependent at the time of the injury to the employee upon his earnings, such a percentage of the sum provided in Paragraph (a) of this section as the average annual contributions which the deceased made to the support of such dependent collateral heirs during the two years preceding the injury bears to his average annual earnings during such two years.[1]

(e) If no amount is payable under Paragraphs (a), (b), (c) or (d) of this section, a sum not to exceed one hundred and fifty dollars for burial expenses to be paid by the employer to the undertaker or to the person or persons incurring the expense of burial.

(f) For all compensation, except for burial expenses provided in this section to be paid in case injury results in death, shall be paid in in-

1 Similar language construed in: In re Murphy, 105 N. E. (Mass.) 635.

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stallments equal to one-half the average earnings, at the same intervals at which the wages or earnings of the employee were paid; or if this shall not be feasible, then the installments shall be paid weekly: *Provided,* such compensation may be paid in a lump sum upon petition as provided in Section 9 of this Act.

(g) The compensation to be paid for injury which results in death, as provided in this section, shall be paid to the persons who form the basis for determining the amount of compensation to be paid by the employer, the respective shares to be in the proportion of their respective dependency at the time of the injury on the earnings of the deceased. *Provided,* that the Industrial Commission or an arbitrator thereof may, in its or his discretion, order or award the payment to the parent or grandparent of a child for the latter's support the amount of compensation which but for such order or award would have been paid to such child as its share of the compensation payable, which order or award may be modified from time to time by the Commission in its discretion with respect to the persons to whom shall be paid the amount of said order or award remaining unpaid at the time of said modification.

The payments of compensation by the employer in accordance with the order or award of the Industrial Commission shall discharge such employer from all further obligation as to such compensation.

In a case where any of the persons who would be entitled to compensation is living at any place outside of the United States, then payment shall be made to the personal representative of the deceased employee.[2] The distribution by such personal representative to the persons entitled shall

[2] The administrator need not make proof of his right to sue unless the question is put in issue by the pleadings. Goelitz v. Industrial Board, 278 Ill. 164.

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be made to such persons and in such manner as the Commission shall order.

(h) 1. Whenever in Paragraph (a) of this section a minimum of one thousand six hundred fifty dollars is provided, such minimum shall be increased in the following cases to the following amounts:

One thousand seven hundred fifty dollars in case of a widow and one child under the age of 16 years at the time of the death of the employee.

One thousand eight hundred fifty dollars in case of a widow and two or more children under the age of 16 years at the time of the death of the employee.

2. Wherever in Paragraph (a) of this section a maximum of three thousand five hundred dollars is provided, such maximum shall be increased in the following cases to the following amounts:

Three thousand seven hundred fifty dollars in case of a widow and one child under the age of 16 years at the time of the death of the employee.

Four thousand dollars in case of a widow and two or more children under the age of 16 years at the time of the death of the employee. [Amended by Act approved June 28, 1919.

§ 127. The amount of compensation. The history of pension legislation teaches that if there is to be any legislative change in the amounts of compensation payable for injuries or death, fixed in the original schedule, we should expect an increase rather than a reduction. In fact, it has been recognized by the framers of most of the State Compensation Laws, that the fixed amounts of compensation provided were perhaps low, but the figures were insisted upon by the employers and consented to by the employees because both recognized the fact that if the rates were changed, they would be made higher rather than lower, and both were anxious to have the principle of compensation established, and

a start made, although in some instances the rate paid might be inadequate.

A moderate rate, however, is not only commended by policy—it is required by the law of the constitution, which forbids spoliation or confiscation, under the forms of law. If a master is to be made responsible, under the police power of the State, for injuries beyond his fault, the burden must be at least a reasonable and not an exorbitant one. In an Indiana case the court said that the compensation provided indicated that the legislature intended the Act as "provisional rather than *compensatory,*" and that it was not intended to place a premium on disability.[3] The fundamental theory of all compensation legislation is to afford definite and certain but only *partial* relief in *all* cases of accidental injury in employment, as distinguished from the indefinite and uncertain larger recoveries in *some* cases under the common law system.[4]

The rates prescribed by the Illinois Act are lower than those fixed by the statutes in some of the other States. Compensation is provided on the basis of 60%, 65% and 66 2/3% in some of the other States, whereas the scale in Illinois is 50%, with an increase of 5% for each child, until such compensation shall reach a maximum of 65%. Although the courts, so far as known, have not been asked expressly to pass upon the reasonableness of the amount of compensation provided for in any compensation law, it would not seem that any such percentage as that provided in the Illinois Act could be called confiscatory or unreasonable.

§ 128. Dependency defined and discussed. A dependent has been defined as one who is sustained by another or relies for support upon the aid of another; who looks to another for support and relies upon him for reasonable necessaries consistent with the dependent's position in life.[5]

[3] In re Dove, 117 N. E. 210.

[4] *Ante,* Chap. 1, § 1.

[5] Keller v. Industrial Commission, 291 Ill. 314; Rock Island Bridge & Iron Works v. Industrial Commission, 287 Ill. 648; Appeal of Hotel Bond Co., 89 Conn. 143; Havey v. Erie R. R. Co., 95 Atl. (N. J.) 124;

It has been said that the test of dependency is whether the claimant relied upon the employee's contributions for his support, wholly or partially, judging from what would be reasonable living expenses for persons in the same class, and that support includes all such means of living as would enable the claimant to live in a style and condition and with a degree of comfort suitable and becoming to his station in life.[6]

Compensation Laws usually define who shall or shall not be considered dependents and generally provide, as does the Illinois Act, that persons legally dependent shall be conclusively presumed to be dependent in fact, and that others claiming dependency will be entitled as dependents upon the proof of the fact. Some of these statutes require that the husband and wife be living together at the time of his death or that the wife is not living separate and apart from him because of her fault, etc. It is also frequently provided that children shall be considered legal dependents only within a certain maximum age limit or during physical or mental incapacity, etc., so that the definitions of dependency under the various State laws must depend to large extent upon the provisions of the particular statute.

In an Indiana case it was said that to confine the inquiry to the question whether the family of a deceased workman could have supported life without any contribution from him, or whether such contributions were absolutely necessary in order that the family might be reasonably maintained, is not a fair test of dependency; but rather the inquiry should include the question whether the contributions from the workman were looked to or depended or relied upon, in whole or in part, by the family for means of reasonable support.[7]

The Illinois Supreme Court has said that a depend-

Kenney v. City of Boston, 222 Mass. 401.

[6] Benjamin F. Shaw Co. v. Palmatory, 105 Atl. (Del.) 417; Pratt Co. v. Industrial Com., 293 Ill. 367; Miller v. Riverside S. & C. Co., 155 N. W. (Mich.) 462.

[7] In re Carroll, 116 N. E. (Ind. App.) 844, 16 N. C. C. A. 80; In re Stewart, 126 N. E. (Ind. App.) 42.

ency which justifies an award is a personal dependency for support and maintenance consistent with the dependent's position in life and does not include the maintenance of others whom the dependent is under no obligation to support, or contributions which merely enable the donee to accumulate money.[8]

In a Connecticut case it was said that the customary receipt of financial assistance from another does not suffice to convert the recipient into a dependent or partial dependent of the donor; nor does it suffice that the donee has come to rely upon the contributions so made. There must in addition be a reliance on the assistance for the purpose and for no other or broader purpose than that of providing self and family with the means of living, judged by the class and position in life of the recipient. For example, one, who, as a result of parental indulgence or folly, has been permitted to grow up in idleness, may not, for that reason only, pose as a dependent entitled to continued assistance.[9]

And where the statute requires dependency rather than a mere contribution to support, it has been held that if the alleged dependent owns a residence he would not be a total dependent, as the payment of rent is an essential factor in the support of every family which does not have its housing supplied from sources other than the wages of the workman.[10]

The question of whether a person is a dependent or not is one of fact.[11]

And the decision of the Board of Commission, or other authority which is given jurisdiction to try questions of fact, is conclusive on the question;[12] but mere

[8] Rock Island Bridge & Iron Works v. Industrial Commission, 287 Ill. 648.

[9] Gherardi v. Connecticut Co., 103 Atl. (Conn.) 668, 16 N. C. C. A. 141.

[10] In re McDonald, 118 N. E. Mass.) 949, 16 N. C. C. A. 87, 214.

[11] Rock Island Bridge & Iron Works v. Industrial Commission, 287 Ill. 648; Keller v. Industrial Commission, 291 Ill. 314; Metal Stamping Corporation v. Industrial Commission, 285 Ill. 528.

[12] *Ibid;* Muncie Foundry & Machine Co. v. Coefee, 117 N. E. (Ind. App.) 524, 16 N. C. C. A. 82; Hasket & Baker Car Co. v. Brown, 117 N. E. (Ind. App.) 555, 17 N. C. C. A. 256, 267; Bloomington-Bedford Stone Co. v. Phillips, 116 N. E. (Ind. App.) 850, 16 N. C. C. A.

hearsay testimony is not sufficient to support a finding of dependency.[13] And in passing upon the question of dependency in specific cases where compensation has not voluntarily been paid, it is the further duty of the commission to determine the dependent person or persons entitled to the compensation;[14] and this, even though there is no dispute between the dependents; but such determination is not necessary if the court appointing the administrator for the claiming dependent, by its order makes proper provision for such distribution.[15]

§ 129. Legal dependents. Subdivision (a) of Section 7 of the Illinois Act, provides that "if the employee leaves any widow, child or children *whom he is under legal obligation to support* at the time of his injury, (compensation shall be paid in) a sum equal to four times the average annual earnings of the employee," etc. In cases of death, therefore, the widow and children, to whom the deceased employee was under legal obligation for support, are conclusively presumed to be dependent, and no proof of actual dependency is required.[16] This right is personal with the legal dependents, and no administrator need be appointed, and the personal representative has no right given by the statute, and cannot make a claim except in the case of dependents "living outside the United States."[17]

While in the case of the widow and children, it is not

180, 185; Bylow v. St. Regis Paper Co., 166 N. Y. Supp. 874, 15 N. C. C. A. 239, 1022; Stevenson v. Illinois Watch Case Co., 186 Ill. App. 418, 5 N. C. C. A. 858; Commonwealth Edison Co. v. Industrial Board, 277 Ill. 74, 14 N. C. C. A. 138; Ludwig v. American Car & Foundry Co., 116 N. W. (Mich.) 835, 16 N. C. C. A. 212.

[13] Western Indemnity Co. v. Industrial Acc. Com., 169 Pac. (Cal.) 261, 16 N. C. C. A. 221, 804, 815, 816.

[14] Swift & Co. v. Industrial Commission, 288 Ill. 132; Paul v. Industrial Commission, 288 Ill. 532; Keller v. Industrial Commission, 291 Ill. 314; Smith-Lohr Coal Co. v. Industrial Commission, 281 Ill. 34.

[15] Hammond Co. v. I. C. Ry. Co., 288 Ill. 262.

[16] Am. Milling Co. v. Industrial Board, 279 Ill. 560, 16 N. C. C. A. 86; Mechanic's Furniture Co. v. Industrial Board, 281 Ill. 530, 16 N. C. C. A. 142; Humphrey v. Industrial Board, 285 Ill. 372, 17 N. C. C. A. 951; Goelitz v. Industrial Board, 278 Ill. 164.

[17] See par. (g); see also Mississippi Power Co. v. Industrial Com., 289 Ill. 353.

necessary to prove actual dependency, or that the deceased husband actually supported them,[18] it is of course necessary that proper proof be made of the marriage relation existing prior to the death of the workman,[19] and that the dependents are living, and no presumption that may arise from the fact that deceased left dependents living in a foreign country when he came to this country is sufficient to prove they are still living.[20]

It is immaterial whether the husband had been delinquent during a portion of his married life, and whether as a matter of fact he supported his wife, or his wife supported him.[21] In the absence of a provision in the statute, requiring that the husband and wife shall be living together at the time of his death, it is not necessary in order to entitle the widow to an award that she was living with him at the time of his death, but it is sufficient if he was under legal obligation to support her.[22] And where there are legal dependents, questions of wealth, poverty or residence are not considered. The only question is one of legal dependency.[23]

§ 130. The widow. Therefore, if it appears that the deceased employee left surviving a widow whom he was under legal obligations to support at the time of his injury, no actual contribution to her support need be shown;[24] and it has been held that a surviving wife who marries the injured workman after the accident and before his death is entitled to compensation as his dependent widow under the law.[25]

If a common law wife, under the law of the State

18 Parson v. Murphy, 163 N. W. (Neb.) 847, 16 N. C. C. A. 174; Holmberg's Case, 120 N. E. (Mass.) 353; Crocket v. International Ry. Co., 162 N. Y. Supp. 359, 14 N. C. C. A. 88; 15 *Id.* 853.

19 Lobuzek v. American Car & Foundry Co., 161 N. W. (Mich.) 193, 14 N. C. C. A. 423.

20 Keystone Steel & Wire Co. v. Industrial Commission, 289 Ill. 587.

21 Doherty v. Grosse Isle Tp., 172 N. W. (Mich.) 596.

22 Smith-Lohr Coal Min. Co. v. Industrial Commission, 286 Ill. 34.

23 Cavaghan's Case, 122 N. E. (Mass.) 298.

24 Smith-Lohr Coal Mining Co. v. Industrial Commission, 286 Ill. 34; Goelitz v. Industrial Board, 278 Ill. 164.

25 Crockett v. International Ry. Co., 162 N. Y. Supp. 359, 14 N. C. C. A. 88; 15 *Id.* 853.

where the accident happens, has a legal status as the wife of the deceased workman, she is a legal dependent entitled to compensation;[26] but it is held that adultery on the part of the wife, even after desertion by her husband, will operate to take the widow out of the class conclusively presumed to be dependent.[27]

Where the wife is made a legal dependent, unless voluntarily living apart from her husband, it has been held that if the employer claims the wife was voluntarily living apart from her husband, the burden of proof is upon him to show it.[28]

The question of whether the persons named in the statute are living together as required by the Act is one of fact.[29] And if the wife is living apart from her husband because of his threats of violence, she will not be held voluntarily living apart so as to defeat her right to compensation.[30]

The question of dependency under the Illinois Act must be determined as of "the time of the injury,"[31] and whether the question is to be determined as of the time of the injury or as of the date of death, depends largely upon the wording of the statute in each case.[32]

If there are several dependents entitled to compensation, the relative degree of dependency should be determined by the Board or Commission, and the award made accordingly, unless the statute specifically prescribes the method of apportionment.[33]

§ 131. Children. In like manner, if the deceased employee left surviving minor children living with him at

[26] Meton v. State Industrial Insurance Dept., 177 Pac. (Wash.) 696; Medland v. Houle Bros. et al., 168 N. W. (Mich.) 446; Ziegler v. P. Cassidy's Sons, 220 N. Y. 98.

[27] Scott's Case, 104 Atl. (Me.) 794.

[28] State ex rel. Grant Construction Co. v. District Court, 163 N. W. (Minn.) 509, 16 N. C. C. A. 78.

[29] Smith v. Industrial Commission, 174 N. W. (Wis.) 462.

[30] State ex rel. London & Lancashire Indemnity Co. v. District Court, 166 N. W. (Minn.) 772, 16 N. C. C. A. 77, 79; 17 *Id.* 790, 958, 1060.

[31] See Par. (a), § 7.

[32] Kuelbach v. Industrial Commission, 165 N. W. (Wis.) 302, 15 N. C. C. A. 842; Collwell v. Bedford Stone & Construction Co., 126 N. E. (Ind. App.) 439.

[33] In re Pagnoni, 118 N. E. (Mass.) 948, 16 N. C. C. A. 187; 17 *Id.* 158.

the time of his injury, no actual dependency need be shown because it is the duty of the father to support his infant children.[34]

This is also true with reference to infant step-children, where the father has actually received such children into his family and treated them as his own.[35] But under the terms of the various statutes defining who are legal dependents, the rulings as to step-children are not uniform. For example, under the Massachusetts Act it is held that a widow's daughter, although living with the family, is not entitled to compensation because of not being the child of the deceased workman; whereas, a son of such workman by a former wife is conclusively presumed to be dependent because as to him there is no surviving parent.[36]

Under the Kansas statute, a child taken and reared by an agreement with its mother was held not to be a dependent child within the meaning of the Act.[37] But an adopted child of a daughter of a deceased workman is not a "child" within the meaning of the Act, entitled to be considered as a dependent,[38] and, according to the weight of authority, the word "child" used in the Compensation Acts as a legal dependent of a deceased workman refers to a legitimate child only, and illegitimate children are not conclusively presumed to be dependent.[39]

And it has been held that there being a natural moral duty on the part of the father to support his illegitimate child, even though at the time he was living in adultery with the mother and had a wife living apart, the father and illegitimate child constitute a household or family

[34] 29 Cyc. 1605; McMullan v. Lee, 78 Ill. 443; 4 Ill. Notes, p. 294, § 419; Plaster v. Plaster, 47 Ill. 290; 2 Ill. Notes, p. 926, § 210; cases, *ante*, N. 24.

[35] Mowbry v. Mowbry, 64 Ill. 383; 3 Ill. Notes, p. 673, § 250; 29 Cyc. 1606.

[36] Holmberg's Case, 120 N. E. (Mass.) 353.

[37] Ellis v. Nevins Coal Co., 163 Pac. (Kas.) 654, 16 N. C. C. A. 178.

[38] Winkler v. New York Car Wheel Co., 168 N. Y. Supp. 826, 16 N. C. C. A. 149.

[39] Murrell v. Industrial Commission, 291 Ill. 334; Scott's Case, 104 Atl. (Me.) 794; Kuelbach v. Industrial Commission, 165 N. W. 302, 15 N. C. C. A. 842.

entitled to receive the benefits of the Act, and the illegitimate child, upon proof of actual support, may be regarded as a dependent.[40]

But in Connecticut it has been held that an illegitimate child, which the father was legally bound to support, was entitled to compensation, although the mother could not be considered a member of the deceased family.[41]

And where an age limit is placed upon those who shall be considered dependent, such limits shall effect only those expressly referred to in the statute. For example, if children are declared to be dependent only until they reach the age of eighteen years, this limitation refers to the legally dependent children of the deceased workman and not to other children who may be entitled as minor dependents.[42]

If only those children residing with the employee at the time of his death are to be conclusively presumed to be dependent, a child who has been deserted for cause is not such a dependent.[43]

Under the Massachusetts Compensation Act, it has been held that a surviving child is not a legal dependent if there is also a surviving widow, the widow taking to the exclusion of such surviving child.[44]

A child *en ventre sa mere* at the time of the father's death is deemed to have been born so far as it is for the benefit of such child,[45] and will be entitled to claim compensation as a legal dependent, providing the child is legitimate;[46] and the posthumous child of a deceased workman would have the same rights to compensation as other children.[47]

If the deceased workman leaves a surviving widow and children, it has been held that if the widow dies subse-

[40] Scott's Case, 104 Atl. (Me.) 794.

[41] Piccinin v. Connecticut Light & Power Co., 106 Atl. 330.

[42] Hasselman v. Travelers Ins. Co., 185 Pac. (Cal.) 343.

[43] Moran's Case, 125 N. E. (Mass.) 157.

[44] In re Employers Liability Assurance Corp., 102 N. E. 697.

[45] Vilar v. Gilbey, 1907 A. C. 139; Smith v. McConnell, 17 Ill. 135; 1 Ill. Notes, p. 614, § 124.

[46] Kuelbach v. Industrial Commission, 165 N. W. (Wis.) 302, 15 N. C. C. A. 842.

[47] Williams v. Ocean Coal Co., (1907), 2 K. B. 422, 9 W. C. C. 44; Bell v. Terry & Tench Co., 163 N. Y. Supp. 733, 16 N. C. C. A. 147.

quent to her husband's death but before compensation is paid to her, under the provision of a statute authorizing the Board upon review to "issue any order which it deems advisable," the compensation may be ordered paid to the minor children.[48]

If a son has been emancipated, or enlists in the military service, or becomes of age, the father is under no further legal obligation to support him and he is therefore not a legal dependent.[49]

§ 132. Widower and children. Primarily the duty to support, maintain and educate children rests upon the father, and during the life time of the father, the mother is not bound to support the children. If the deceased employee, therefore, is the wife, living with the husband and children at the time of her death, no presumption as to the dependency of either the surviving husband or children arises, and proof of actual dependency would be necessary, under the provisions of subdivision (b) of Section 7.[50]

§ 133. Divorce and separate maintenance decrees. If a deceased employee "was under legal obligation to support" a surviving wife or infant child at the time of the injury, by reason of a divorce or separate maintenance decree, such surviving wife or infant child would be entitled, without proof of actual dependency.[51] The decree for alimony or separate maintenance merely reduces the common law liability to definite form.[52] It would therefore seem that so long as the marriage relation remained undissolved, and before the disposition of a pending divorce proceeding in which an order for alimony *pendente lite* had been entered requiring the husband to continue the support of his wife, regardless of the

[48] In re Bartoni, 114 N. E. (Mass.) 663, 15 N. C. C. A. 1025.

[49] Iroquois Iron Co. v. Industrial Com., 293 Ill. ——, (June, 1920).

[50] Mowbry v. Mowbry, 64 Ill. 383, 3 Ill. Notes, p. 673, § 250, 29 Cyc. 1606. See also Holmberg's Case, 120 N. E. (Mass.) 353.

[51] Ninneman v. Industrial Commission, 176 N. W. (Wis.) 909; Perry v. Industrial Accident Commission, 169 Pac. (Cal.) 353, 16 N. C. C. A. 83; Continental Casualty Co. v. Pillsbury, 184 Pac. (Cal.) 658.

[52] Continental Casualty Co. v. Pillsbury, 184 Pac. (Cal.) 658.

merits of the cause, as finally determined, the wife must be held to be a legal dependent. Remarriage of the divorced wife would remove her from the class of legal dependents, because the obligation to pay alimony ceases upon remarriage.[53] Also, an unfaithful wife who has abandoned her husband and family, has been held not to be included in the statutory benefits given a widow.[54]

And it has been held in Indiana where a divorce decree required the deceased employee to support a daughter, that the order of the court in such proceeding should merely be taken into account in determining the existence of the ultimate fact of dependency, where it appeared that the widow was legally dependent and living with the deceased employee at the time of his death, whereas the daughter was not.[55]

Where in an Indiana case the widow claimed to be dependent, and it appeared that she had been divorced from a former husband in the State of Illinois, where she then resided, the decree providing that neither she nor her husband should remarry within a year, and thereafter, within the year, she had gone to the State of Indiana and married the deceased, which was lawful in that State, such marriage was not sufficient to support her claim on account of the death of the deceased employee in Wisconsin, the State of Wisconsin having a law similar to that of Illinois that divorced persons might not remarry, the courts of that State giving effect to the Illinois restriction, on the ground of comity.[56]

After a divorce obtained, even for the fault of the deceased workman, and although the decree did not purport to settle the property rights of the parties, the surviving wife would have no right to claim compensation as a legal dependent under Par. (a). of Section 7, of the Illinois Act, because at the time of such workman's death

[53] Stillman v. Stillman, 99 Ill. 196, 5 Ill. Notes, p. 222, § 56.

[54] Richard v. Lazard, 108 La. 540; Armstrong v. Steeber, 3 La. Ann. 713; Prater v. Prater, 87 Tenn. 78; see also Gough v. Industrial Commission, 162 N. W. (Wis.) 434.

[55] Schwartz v. Gerding & Aumann Bros., 129 N. E. (Ind. App.) 89.

[56] Hall v. Industrial Commission, 162 N. W. (Wis.) 312, 13 N. C. C. A. 202.

he would not be under "legal obligation" to support her.[57] She might, however, be entitled as an actual dependent.

§ 134. The Pauper Act. Certain statutory obligations for support are also imposed by the Illinois Pauper Act.[58] Among other things, this Act provides:

"Sec. 1. That every poor person who shall be unable to earn a livelihood, in consequence of any bodily infirmity, idiocy, lunacy, or other unavoidable cause, shall be supported by the father, grandfather, mother, grandmother, children, grandchildren, brothers or sisters of such poor person if they or either of them be of sufficient ability: Provided, that when any persons become paupers from intemperance or other bad conduct, they shall not be entitled to support from any relation, except parent or child.

"Sec. 2. The children shall first be called on to support their parents, if there be children of sufficient ability; and if there be none of sufficient ability, the parents of such poor person shall next be called on if they be of sufficient ability; and if there be no parents or children of sufficient ability, the brothers and sisters of such poor person shall next be called on, if they be of sufficient ability; and if there be no brothers and sisters of sufficient ability, the grandchildren of such poor person shall next be called on, if they be of sufficient ability, and next the grandparents, if they be of sufficient ability: Provided, married females, while their husbands live, shall not be liable to contribute for the support of their poor relatives, except when they have separate property, or property in their own right, out of which such contributions can be made: Provided, further, that when the county in the first instance shall furnish support to such persons as are mentioned in Section 1 of this Act, that the county can sue the relatives mentioned in this section, in the manner provided in this Act, for any sum or sums paid by the county for the

[57] Sweet v. Sherwood Ice Co., 100 Atl. (R. I.) 316.

[58] Hurd's Rev. Stat., Chap. 107.

support of such person mentioned in Section 1 of this Act."

The Illinois Supreme Court has said that "the object of both the Statute of Elizabeth and of our existing statute is to protect the public from loss occasioned by neglect of a moral or natural duty imposed on individuals, and to do this by transforming the imperfect moral duty into *a statutory and legal liability.*" [59]

This statute provides for a complaint to be made by the overseer of the poor [60] in case of any failure on the part of any person upon whom the law imposes the obligation for support, and upon a hearing of such complaint, the court is authorized to enter an order requiring weekly payments to be made for the support of such poor person. The obligation, however, is imposed by the statute, and not, in the first instance, by the order of the court. It would therefore seem that any person mentioned in the Pauper Act as under legal obligation to support any "widow, child or children," assuming sufficient ability for such support, would be covered by the Compensation Act, by virtue of the language of Subdivision (a) of this section, and that therefore in case of his death, any of such legal dependents would be entitled to compensation without proof of actual dependency. The only question of fact which would be open as a defense to a claim made by any such legal dependent, would be that the deceased was not of sufficient ability to contribute to the support of such legal dependent, and on that account never did actually so contribute. In those cases where the deceased employee was, at the time of his death, actually contributing or required to contribute under an order of court to the support of such legal dependent, proof of such order would establish his claim as a legal dependent, conclusively presumed to be entitled to compensation.[61] In an Illinois case it was contended that the deceased workman was under no legal obligations to support his sur-

[59] People v. Hill, 163 Ill. 186, 190, 7 Ill. Notes, p. 438, § 87.

[60] § 4.

[61] See *post*, § 141, as to further effect of Pauper Act.

viving daughter, she being of legal age. The court said: "Margaret, the unmarried daughter of the deceased was twenty-two years old and had been engaged for some years working as a domestic servant in private families. If it be conceded that deceased was under no legal obligation to provide or contribute to the support of his daughter after she became of age unless she was "unable to earn a livelihood in consequence of any bodily infirmity * * * or other unavoidable cause," the statute (Hurd's Rev. Stat. 1916, Chap. 107, Sec. 1, —the so-called "Pauper Act") made it his duty, under those conditions to support her," the court thus recognizing the legal obligation imposed by this Act, even in the absence of an express order requiring contributions to support.[62]

§ 135. The Bastardy Act. In like manner, if the deceased employee, at the time of his death was under legal obligation to support a bastard child, by virtue of an order of a court of competent jurisdiction, duly entered after proper hearing according to the statute, during the life of such order such bastard child would be a legal dependent, conclusively presumed, upon proof of such order, to be entitled to compensation.[63] And it would seem that the mother has such an interest as to entitle her to claim compensation as a legal dependent.[64] The word "children," however, means legitimate children only,[65] and in the absence of a bastardy order, or after such an order had been discharged by payment, as required by the statute, an illegitimate child would not be covered by the Act, as a legal dependent. An illegiti-

[62] Mechanics Furniture Co. v. Industrial Board, 281 Ill. 534.

[63] Hurd's Rev. Stat., Chap. 17, § 8; Bowhill Coal Co. v. Neish, (1909), S. C. 252, 2 B. W. C. C. 253.

[64] People v. Nixon, 45 Ill. 353, 2 Ill. Notes, p. 852, § 317; Hauskins v. People, 82 Ill. 193, 4 Ill. Notes, p. 483, § 184.

[65] Blacklaws v. Milne, 82 Ill. 505, 4 Ill. Notes, p. 506, § 415; Metal Stampings Corp. v. Industrial Commission, 285 Ill. 528; Murrell v. Industrial Commission, 291 Ill. 334; Scott's Case, 104 Atl. (Me.) 794; Kuelbach v. Industrial Commission, 165 N. W. (Wis.) 302, 15 N. C. C. A. 842; Bell v. Terry & Tench Co., 163 N. Y. Supp. 733, 16 N. C. C. A. 147; but see Piccinim v. Commercial Light & Power Co., 106 Atl. (Conn.) 330.

mate child might be an actual dependent, however, under the provisions of Subdivision (b) of Section 7, for such child is made an heir of its mother and any maternal ancestor, by statute.[66]

§ 136. Actual dependents. Subdivision (b) of Section 7 of the Illinois Act provides compensation for any "parent, husband, child or children who at the time of the injury were totally dependent upon the earnings of the employee." This class of beneficiaries, therefore, includes those heirs (as defined) who are *actually* dependent, as distinguished from those who are conclusively presumed to be dependent because of existing legal obligations for their support. Dependency, under this subdivision, is entirely a question of fact, to be determined from the circumstances of each case. The fact to be determined in this class of cases, however, is whether the workman has contributed to or has supported those who claim to be dependent upon him, and not whether the marriage or parental relation existed at the time of the injury, etc., as in the case of legal dependents.[67]

No presumption of dependency arises from the mere fact of payment of money. It will not be presumed that the payment was made to assist in the support of the alleged dependent, rather than to pay an ordinary debt, for services rendered or for money loaned, unless there is shown some relationship from which such presumption may legitimately arise, thus throwing the case into that class where dependency is legally presumed, upon proof of the required relationship.[68] No standards of living are set up in the Act, but it has been said that the test of dependency is whether the claimant relied upon the

[66] Hurd's Rev. Stat., Chap. 39, § 2.

[67] Peabody Coal Co. v. Industrial Commission, 289 Ill. 330; Commonwealth Edison Co. v. Industrial Board, 277 Ill. 74, 14 N. C. C. A. 138; Muncie Foundry & Machine Co. v. Coeffe, 117 N. E. (Ind. App.) 524, 16 N. C. C. A. 82; Haskell & Baker Car Co. v. Brown, 117 N. E. (Ind. App.) 555, 17 N. C. C. A. 256, 267; Rock Island Bridge & Iron Wks. v. Industrial Commission, 287 Ill. 648; see also cases cited under § 129, *ante*.

[68] Peabody Coal Co. v. Industrial Commission, 289 Ill. 330.

employee's contributions for his support, wholly or partially, judging from what would be reasonable living expenses for persons in the same class. Support includes all such means of living, as would enable a claimant to live in the style and condition, and with a degree of comfort suitable and becoming to his station in life.[69]

The English definition of dependents is "such of the members of the workman's family as were wholly or in part dependent upon the earnings of the workman at the time of his death."[70] The House of Lords in considering the English Act with reference to dependency have said that they "declined to assume that the legislature has contemplated a particular 'standard' * * * a standard dependent upon what was the ordinary course of expenditure in the neighborhood, and in the class in which the man lived. * * * What the family was in fact earning, what the family was in fact spending, for the purpose of its maintenance as a family, seems to me to be the only thing which the county court could properly regard."[71]

In the case there under consideration it was held that a father, while himself earning wages, may be in part dependent upon his child; and that when it was proved that a child contributed to the family earnings, and that the father received the contribution and spent it in maintaining himself and his family, that was sufficient evidence upon which to find that the father was a dependent.[72]

But the fact that the father actually receives a contribution from a member of his family, would not seem (under the English Act) to be conclusive of the question

[69] Benjamin F. Shaw Co. v. Palmatory, 105 Atl. (Del.) 417; In re Carroll, 116 N. E. (Ind. App.) 844, 16 N. C. C. A. 80; In re Stewart, 126 N. E. (Ind. App.) 42; Blanton v. Wheeler & Howes Co., 99 Atl. (Conn.) 494, 14 N. C. C. A. 103.

[70] 6 Edw. VII, Chap. 58, § 13.

[71] Main Colliery Co. v. Davies, (1900), A. C. 358, 2 W. C. C. 108.

[72] *Ibid.* See also French v. Underwood, (1903), 19 T. L. R. 416, 5 W. C. C. 119; Legget v. Burke, (1902), 4 F. 693. *Contra*, Simmons v. White, (1899), 1 Q. B. 1005, 1 W. C. C. 89, overruled by Main Colliery Co. v. Davies, (1900), A. C. 358.

as to whether he is a dependent or not. All the circumstances in the case must be considered.[73]

For example, an infant workman earned 6s 11d per week, which he paid to his father to assist in maintaining the family. He helped his father, who worked as a barber, and his services in this, were worth 6s per week. He was killed by an accident, and his father applied for compensation, as a partial dependent. In sending the case back for rehearing, it was held that the lower court should consider, not alone whether the boy had paid something into the family fund, but also the cost of maintenance of the son, the value to the father of the son's services in the barber business, and all the other facts intimating that if the services, plus wage, did not exceed cost of keep, the father should not be held dependent.[74]

The doctrine of the American courts seems to be that the test of dependency is whether the claimant may be said to have relied upon the employee's earnings for support, considering what would be reasonable living expenses for persons in the same class, whereas, the test applied by the English courts is whether the claimant is so dependent, considering what the family was in fact earning and spending.

§ 137. Parents. The Illinois Act makes parents of the deceased employee dependents on proof of the fact of dependency at the time of the injury. The Illinois Act of 1915 only required proof that the deceased workman had contributed to the support of the dependent within four years prior to his death, and under this provision it was held that mere proof of contribution of any substantial amount was sufficient to make the claimant a dependent under the law; and it was held that if a minor child within such four years prior to his injury contributed to the support of his parents, it was not necessary, in order to entitle the parents to an award, that the amount so contributed should exceed the cost or

[73] Tamworth Colliery Co. v. Hall, (1911). 1 K. B. 341, 55 S. J. 615, 4 B. W. C. C. 107, 313.

[74] *Ibid.*

expense of such child to his parents.[75] And it was also held by the Appellate Court that a son, living with his parents and paying them for his board and lodging at a price ordinarily paid for such board and lodging at a boarding house, was contributing to the support of such parents within the language of the Act of 1915.[76]

It was also held under the Act of 1913, which contained the same provision, that, where a father lived with his six children in his own flat and all the children contributed for board more than the amount of the household expenses of the family, the father was a dependent;[77] but where the statute requires proof of dependency rather than mere proof of contributions to the support of the dependent, the rule is less liberal and evidence upon which actual dependency may be based must be produced, and mere contributions to support are not sufficient.[78] For example, where the statute required a proof of actual dependency and it was shown that the deceased gave all his wages to his mother, and his mother gave back from time to time what money he desired, and the parents themselves admitted that they did not know whether the son contributed anything to their actual support or not, it was held that there was no proof of dependency.[79]

Also, where the deceased gave his mother $10.00 per week, $5.00 for his board and $5.00 toward the home and to help send a little brother to school, and the father was employed and gave his wife $20.00 per week for the support of his family, including the deceased, his mother and a young brother, it was held the parents were not dependent upon the deceased son.[80]

And it is held that if it costs as much to board a son

[75] Metal Stampings Corp. v. Industrial Commission, 285 Ill. 528.

[76] Erickson v. American Well Works, 196 Ill. App. 346, 15 N. C. C. A. 1026.

[77] Mallers v. Industrial Board, 281 Ill. 418, 16 N. C. C. A. 175.

[78] Pratt Co. v. Industrial Com., 293 Ill. 367.

[79] McGarvie v. Frontenac Coal Co., 175 Pac. (Kas.) 375.

[80] Wilkes v. Rome Wire Co., 172 N. Y. Supp. 406; Peoples Hdwe. Co. v. Croke, 118 N. E. (Ind.) 314, 16 N. C. C. A. 179, 186.

as he contributes to the parents claiming to be dependent, there is no dependency.[81]

And it is held that if a married man living with his parents contributes a reasonable amount to their support, which does not appear to be more than would be required reasonably to entertain him and his wife, the parents should not be held dependent on such son, especially where the father himself was earning more than the son.[82]

Where parents claim to be dependent, any change in their condition after the death of a child cannot be taken into consideration in passing upon the claim for compensation and the child's board should be deducted from the amount which it is claimed that he paid to the parents for the obvious reason that money devoted to the decedent's support could not at the same time be devoted to the support of the parents.[83]

Where citizens and residents of a foreign country claimed that they were dependent upon a son who was an employee killed in a coal mine in West Virginia and the evidence as to dependency consisted of affidavits as to the transmission of money each month to the family abroad and receipts for such money, it was held that dependency was not established, in the absence of evidence as to the age, character and social standing, earnings, etc., of the family living abroad.[84]

And it is held that no presumption arises that sums of money given to a parent by a child, where the child is under no legal obligation to support the parent, are contributions to the parent's support.[85] And also no presumption arises, from the mere fact of payment of money, that it was made to assist the alleged dependent rather than to pay an ordinary debt for services ren-

[81] Moll v. City, 165 N. W. (Mich.) 649, 16 N. C. C. A. 186.

[82] Birmingham v. Westinghouse Electric & Mfg. Co., 167 N. Y. Supp. 520, 16 N. C. C. A. 179, 189.

[83] Engberg v. Victoria Copper Mining Co., 167 N. W. (Mich.) 840.

[84] Poccardi v. State Compensation Commission, 91 S. E. (W. Va.) 663, 12 N. C. C. A. 129, 137.

[85] Bromwell v. Bromwell, 139 Ill. 424.

dered or for money loaned, unless there is shown some relationship from which such presumption may legitimately arise.[86] But where the parents are in fact dependent in part upon the son's earnings and a proper proof of that fact is made, they should be held dependents, even though the father is himself earning a substantial amount or owns property.[87] And in a Nebraska case, where a son, who was killed, had written to his mother about five months before the injury, promising to come and live with her and support her, but soon after became ill and could not do so, and she had largely depended upon a small personal bank account drawing four per cent interest for her support, the Court said there was an obligation upon the part of the son to support his mother and the presumption was that the son would have done his duty as promised, and held that she was a dependent.[88] But in an Illinois case it was held that the mere intention of a son to support his mother in the future was not sufficient to make her a dependent.[88a]

The right of the parent to claim as a dependent of his minor child, in Massachusetts depends upon the question as to whether the child has been emancipated or is still under the control of the parent and the parent, therefore, entitled to the minor's earnings; and it is there held that where there is nothing to show that the child has been emancipated or the ordinary legal relation between the father and the minor child does not exist, the father, under the law, is entitled to the wages of the minor son and is obligated to furnish him with reasonable support, including board and clothing and is, therefore, entitled to compensation as a dependent.[89]

And it is said that in deciding the question of whether a parent is wholly or partially dependent on the wages

[86] Peabody Coal Co. v. Industrial Commission, 289 Ill. 330.

[87] Fennimore v. Pittsburg Scammon Coal Co., 164 Pac. (Kas.) 265, 16 N. C. C. A. 176.

[88] Parcel v. Murphy, 163 N. W. (Nebr.) 847, 16 N. C. C. A. 174.

[88a] Alden Coal Co. v. Industrial Com., 294 Ill. ——, (June, 1920).

[89] Denvinski's Case, 120 N. E. (Mass.) 856.

of a deceased child, the expenses incurred by the parent on account of the child, on the one side, are to be weighed against the benefits, including the wages received by the parent from the labor of the child, on the other side. All these circumstances are to be considered in reaching a conclusion as to whether there is dependency in whole or in part; but when the fact of dependency in whole or in part has been established, the Compensation Act must be referred to for the purpose of determining the amount of compensation payable, and unless the Act authorizes deductions to be made for expenses incurred by the parent on behalf of the child, such deduction may be considered in reduction of the amount of compensation payable.[90]

But mere hearsay testimony as to contributions of a son to an alleged dependent parent is not sufficient to establish the dependency of such parent;[91] but the question of dependency is a question of fact to be determined in each case according to the evidence.[92]

§ 138. Children. Children, whether the father is under legal obligation to support them or not, are dependents, if as a matter of fact they have been dependent upon him for support.[93] This rule has been extended to apply to illegitimate children, where there is proof of actual dependency. For example, it has been held that there being a natural and moral duty on the part of the father to support his illegitimate child, even though at the time the father was living in adultery with the mother, and had a wife living apart, the father and the illegitimate child constituted a household or family entitled to receive the benefits of the Act, and the illegitimate child upon proof of *actual* support may be regarded

[90] *Ibid.*

[91] Western Indemnity Co. v. Industrial Acc. Com., 169 Pac. (Cal.) 261, 16 N. C. C. A. 221, 804, 815, 816.

[92] Metal Stampings Corp. v. Industrial Commission, 285 Ill. 528; Peabody Coal Co. v. Industrial Commission, 289 Ill. 330; Bylow v. St. Regis Paper Co., 166 N. Y. Supp. 874, 15 N. C. C. A. 239, 1022.

[93] Mechanics Furniture Co. v. Industrial Board, 281 Ill. 530, 16 N. C. C. A. 142; Peabody Coal Co. v. Industrial Board, 281 Ill. 579, 16 N. C. C. A. 143.

as a dependent.[94] And where the statute fixes an age limit for children legally dependent, it is held not to apply to other minors who are able to prove actual dependency.[95]

But it has been held that the mere fact that the deceased did not charge a claimant who lived with him, any board, and courteously furnished some clothing and school supplies, did not make such person a dependent.[96]

§ 139. Husband. If the deceased employee is the wife, who was living with the husband at the time of her death, no presumption as to the dependency of the husband arises, as the wife is not legally bound to support her husband, but under Paragraph (b) of Section 7 of the Illinois Act, the surviving husband, upon proof of actual dependency may be entitled to compensation in the same manner as dependent parents or children.

§ 140. Divorced wife. The Illinois statute provides that "if any husband or wife is divorced for the fault or misconduct of the other, except where the marriage was void from the beginning, he or she shall not thereby lose dower nor the benefit of any such jointure, but if such divorce shall be for his or her own fault or misconduct such dower or jointure, and any estate granted by the laws of this State, in real or personal estate of the other, shall be forfeited."[97]

Under this section it has been held that the divorced wife does not lose dower or jointure by the divorce, unless it be granted for her own fault or misconduct.[98] If therefore a wife secured a divorce from her husband for his fault, and the decree did not settle all the property rights between the parties, the divorced wife might still be a dependent within the meaning of the language of Section 7, and entitled to compensation, upon the

[94] Scott's Case, 104 Atl. (Me.) 794.

[95] Hasselman v. Travelers Ins. Co., 185 Pac. (Cal.) 343.

[96] In re Lanman, 117 N. E. (Ind. App.) 671, 16 N. C. C. A. 153, 155.

[97] Hurd's Rev. Stat., Chap. 41, § 14.

[98] Clark v. Lott, 11 Ill. 105, 1 Ill. Notes, p. 335, § 84; Gordon v. Dickison, 131 Ill. 141, 6 Ill. Notes, p. 496, § 52; Kirkpatrick v. Kirkpatrick, 197 Ill. 144, 8 Ill. Notes, p. 156, § 64; Perry v. Industrial Accident Commission, 169 Pac. (Cal.) 353, 16 N. C. C. A. 83.

authority of the cases cited. She would cease to be his "widow" upon remarriage prior to his death.[99]

§ 141. The Pauper Act. We have already seen [1] that the "widow, child or children" may be brought within the classification of legal dependents, under the provisions of Subdivision (a), by an order of the County Court, under the Pauper Act. The provision of Subdivision (b), Section 7, is, "parent, husband, child or children who at the time of the injury were totally dependent," etc. The provision of Subdivision (c) is "parent, child or children, grandparent or grandchild," etc. If, therefore, at the time of the death, any one of the heirs mentioned in either Subdivision (b) or (c) were dependent upon the workman at the time of his death, by reason of the Pauper Act, or an order for support entered in a pauper proceeding, they would be actual dependents, and entitled to apply for compensation as such.[2] Mere hearsay evidence of contributions to support, however, is not sufficient.[3]

§ 142. Dependent upon more than one deceased. It has been held in England that a person who is partially dependent on more than one person killed in the same accident, may recover in respect of each death such compensation as he may be entitled to, even though the aggregate recovered may exceed the limit, which in the English Act is 300 pounds.[4]

§ 143. "Injury resulting in death,"—construed. Compensation under this section is payable "for an injury to the employee resulting in death." In addition to proving, therefore, that the accident arose out of and in the course of the employment, the burden is upon the dependent, either legal or actual, to show that the injury to the employee resulted in death.[5] It has been held, how-

[99] Stillman v. Stillman, 99 Ill. 196, 5 Ill. Notes, p. 222, § 56.

[1] *Ante*, § 134.

[2] Mechanics Furniture Co. v. Industrial Board, 281 Ill. 530, 16 N. C. C. A. 142.

[3] Western Indem. Co. v. Industrial Accident Commission, 169 Pac. 261, 16 N. C. C. A. 221, 804, 815, 816.

[4] Hodgson v. West Stanley Colliery, (1910), A. C. 229, 3 B. W. C. C. 260.

[5] Albaugh Dover Co. v. Industrial Board, 278 Ill. 179, 14 N. C. C. A. 130, 427, 545.

ever, that all possibility of death by other causes need not be excluded, and if the circumstances reasonably lead to the conclusion that death resulted from the injury compensation should be awarded.[6] The language of the English Act[7] is "where death results from the injury," and the decisions under this language all hold that the onus is on the claimant to prove that the death was the result of the injury.[8] This is not the same as saying that it must be shown that the death was the natural and probable consequence of the injury. The question is whether in fact death resulted from the injury, or whether it was caused by some new intervening cause.[9]

A workman who was injured, later was taken with erysipelas from which he died. The arbitrator found that the erysipelas which caused the death, was not a natural or probable consequence of the injury, and refused compensation. The Court of Appeal said:

"The only question is whether death in fact resulted from the injury. If death in fact resulted from the injury, it is not relevant to say that death was not the natural or probable consequence thereof. The question whether death resulted from the injury resolves itself into an inquiry into the chain of causation. If the chain of causation is broken by a *novus actus interveniens,* so that the old cause goes and a new one is substituted for it, that is a new act which gives a fresh origin to the after-consequences. * * * If no new cause, no *novus actus,* intervenes, death has in fact resulted from the injury."[10]

§ 144. Death resulting from the injury—illustrative cases. Where an employee was injured by a barrel falling on his leg and the injury subsequently developed an abscess, necessitating treatment in a hospital, and while at the hospital the employee suffered a further injury

6 In re Uzzio, 117 N. E. (Mass.) 349, 15 N. C. C. A. 234.

7 Sched. I. (1), 6 Edw. VII, Chap. 58.

8 Dundee Steam T. Co. v. Robb, (1910), 48 S. L. R. 11; Hugo v. Larkins & Co., (1910), 3 B. W. C. C. 228.

9 Dunham v. Clare, (1902), 2 K. B. 292, 4 W. C. C. 102.

10 *Ibid;* see also "Proximate Cause," *ante,* § 65.

by a fall while getting out of bed, resulting in breaking the leg at the point where the abscess had attacked the bone, it was held that his death, resulting from shock due to an operation six days later, was properly attributed to the original injury.[11]

Where it was shown that the deceased who had partially recovered from a fracture of the leg, was seized with and dies suddenly as the result of what was described by the defendant's physicians as cerebral embolism resulting from a long standing case of arteriosclerosis, and by the plaintiff's physicians as pulmonary embolism caused by a clot of blood from the injured leg, it was held that a finding for the plaintiff should not be disturbed.[12]

Where an employee suffered injuries for which he was treated by the employer's physician and then treatments were stopped in the belief that the employee had recovered from the effects of the injury, and about two years later he was operated upon by the employer's surgeon and the point of the operation was about the same as the site of the original injury and the condition found might have resulted from the injury, the dependents were held entitled to recovery as for his death.[13]

A workman met with an accident. After recovering from the direct effects of the accident, he did not regain his normal health, but continued in a weak and debilitated state. He eventually died thirteen months after the accident from bronchitis following influenza. The county court judge found that the bronchitis proved fatal because of the condition to which the accident had reduced the deceased, and that death resulted from the injury, and the Court of Appeal sustained the finding.[14]

Shortly after a fall of coal from the roof of a mine, in the exact spot where a miner was working, he complained

[11] Hammond v. Industrial Commission, 288 Ill. 262; Shell Co. of Calif. v. Industrial Acc. Com., 172 Pac. (Cal.) 611, 16 N. C. C. A. 552; 17 *Ibid*, 256, 257.

[12] Klage v. Bunsen Coal Co., 201 Ill. App. 58.

[13] Western Indemnity Co. v. Industrial Acc. Com., 169 Pac. (Cal.) 663, 16 N. C. C. A. 221, 804, 815, 816.

[14] Thoburn v. Bedlington Coal Co., Ltd., (1911), 5 B. W. C. C. 128.

that his foot hurt him. Twelve days later he died of tetanus. Two days after the fall he showed his foot to his wife, who found it swollen and with a sore on the outer side. Six days after the fall his foot was seen by a doctor, who found an abrasion on the outer side and a scar on the sole; both wounds were healing and much in the same state. On the day before his death, there was no trace of the wound on the side of the foot, but the small scar on the sole of the foot was still to be seen, healed. The county court judge found that there was an accident, as the result of which twelve days later the miner died from tetanus. The Court of Appeal held that there was evidence to support the finding, and sustained it.[15]

A workman was blind in one eye. He subsequently received an injury to the other eye, which rendered him almost entirely blind. In consequence of this, his nervous system broke down, insanity followed, and he committed suicide. It was held that the claim should not have been dismissed, although it was not expressly decided that the death was the result of the accident.[16]

A workman received an injury causing total blindness. The mind became affected, softening of the brain supervened, and death followed. It was held by the county judge that the death was a result of the injury.[17]

Death during, or accelerated by a surgical operation, if the operation may be considered a reasonable step to take, to obviate the consequences of the accident, is held to result from the accident.[18] A workman's hand was caught between two rollers, and severely injured. In the ordinary course the hand would have been amputated, but the surgeon endeavored to save the hand by thoroughly cleansing the wound. This being very painful an anæsthetic was administered, and this operation, which was described as a "bold experiment" was suc-

[15] Stapleton v. Dinnington Main Coal Co., (1912), 5 B. W. C. C. 602.

[16] Malone v. Cayzer, (1908), S. C. 479, 45 S. L. R. 351, 1 B. W. C. C. 27.

[17] Mitchell v. Grant, (1905), 118 L. T. Newsp. 462, 7 W. C. C. 113.

[18] Shirt v. Calico P. Assn., (1909), 2 K. B. 51, 2 B. W. C. C. 342.

cessful, but two months after the first operation, in order to prevent contraction, which would have rendered the hand rigid and practically useless, it became necessary to graft some skin on the hand. This operation being painful, though not dangerous, an anæsthetic was again administered, and the man died under it. It was held that the test was whether the operation was reasonable; that the second operation being only a second step in the efforts to effect the cure, was a reasonable one; that the death resulted from the original injury, and that the employer was liable under the Compensation Act.[19]

In a Wisconsin case where it was claimed that the proximate cause of the death was the refusal of the injured man to submit to and follow the treatment of his physician it was held that it was necessary to show: (1) that the undisputed evidence disclosed an unreasonable refusal to follow the prescribed treatment, and (2) that had he followed it, death would not have resulted.[20]

§ 145. Death not resulting from the injury—illustrative cases. A workman met with an accident to his arm. He was taken to a hospital, his arm put in splints, and he was then sent home. The next day he complained to his wife of pain in the right side, and on the day following, he again went to the hospital, where he was detained as suffering from an acute attack of pneumonia, from which he died two days later. It was held that the death did not result from the injury.[21]

A workman was injured in his head by a fall. Traumatic neurasthenia supervened, and gradually became worse. About eight months after the accident, he was found drowned in a canal, 400 yards from his home. The county court judge found that he committed suicide, and that his suicidal tendency was the result of the accident, and awarded compensation to the dependents. In holding that there was no evidence to support the finding, the Court of Appeal said: "The body of the man was found in the canal. There was no evidence to show how he

19 *Ibid.*

20 Weiner v. Industrial Commission, 176 N. W. (Wis.) 781.

21 Cameron v. Port of London Authority, (1912), 5 B. W. C. C. 416.

came there. We should presume against suicide. It is quite clear that the evidence shows that the man had suffered from his accident and that it had affected his mind, so that he was restless. The possibility that it might be suicide is much greater than it would be in an ordinary case; but it does not go beyond that. Even if we assume the man did go and walk along the bank of the canal, it was very possible he might have tripped his foot and fallen in. You have not excluded that as a reasonable possibility. Nobody suggests that the depression had ever taken any suicidal form. There was no evidence as to how he came by his death." In this case, the onus on the claimant to show that the death was the result of accident, was not discharged, and the court held that it could not be assumed that a man was guilty of the crime of suicide.[22]

A workman injured his finger, and was put under an anæsthetic for the purpose of amputation. After the amputation, and while recovering from the effects of the anæsthetic, the surgeon decided to remove a tooth, of which the patient had complained. Anæsthetics were again administered, and shortly thereafter the man died. It was held that the evidence was equally consistent with death having resulted from a spasm induced by an attempt to swallow the blood caused by pulling the tooth, and with the anæsthetic administered for the first operation, and that the claimant had not discharged the burden of proof that death had resulted from the accident.[23]

An employee was doing some heavy lifting of a boiler and sustained an injury which resulted in a hernia. A month later an operation was performed and employee made a fair recovery from the operation, the wound having healed by primary intention, and the man was able to be about for a time, although in a weakened condition; and six weeks after the operation his condition became such that he had to take to his bed and died soon

[22] Southall v. Cheshire Co. News Co., (1912), 5 B. W. C. C. 251.

[23] Charles v. Walker, (1909), 25 T. L. R. 609, 2 B. W. C. C. 5; Albaugh Dover Co. v. Industrial Board, 278 Ill. 179, 14 N. C. C. A. 130, 427, 545.

afterwards. At the time of the operation and for some time prior thereto, the deceased suffered from chronic myocarditis and arterio sclerosis. It was held that the proof failed to support the theory that the hernia accelerated or aggravated the cardiac condition of the deceased or that it was the direct cause of his death; that to establish the fact that death resulted from an injury it was clearly not sufficient to prove that the person sustained the injury, that an operation was performed on account thereof, and, after he had apparently recovered from the effects of the operation and the anæsthesia, he died from a disease that existed before the injury.[24]

§ 146. Compensation paid before death. Although under the provisions of Section 21 of the Act [25] the right to compensation payments does not survive the death of the person entitled thereto, the separate rights of the employee and his dependents, in those cases where death ultimately, although not immediately, results from the injury, is recognized by Subdivisions (a) and (b) of the section here under consideration, as follows: "Any compensation payments, other than necessary medical, surgical or hospital fees, or services, shall be deducted in ascertaining the amount payable on death." While therefore, under this provision (as well as under Section 8 (g)), any amount paid prior to the death, may be deducted from the amount to be paid the dependents upon death, nothing that the workman may do during his life, can affect the rights of the dependents to the compensation which the law gives them.[26] These benefits are personal with them, and the workman has no control over them. It has therefore been held that an agreement or an award for compensation under the Act, obtained by the workman, and payments made thereunder, will not deprive the dependents of the compensation due them, in case death ultimately results; nor the redemption of

[24] Tucillo v. Ward Baking Co., 167 N. Y. Supp. 666, 15 N. C. C. A. 637.

[25] See *post*, Chap. XIV.

[26] In re Nichols, 104 N. E. (Mass.) 566, 11 N. C. C. A. 501; Curtis v. Slater Constr. Co., 168 N. W. (Mich.) 958, 14 N. C. C. A. 662, 785.

weekly payments by a lump sum, received by the workman; nor the termination of weekly payments, by agreement or order of court.[27]

§ 147. Compensation for death—when and to whom payable. The object of the Compensation Law being to prevent indigence and poverty and recourse to charitable aid,[28] the Illinois Act, in common with most compensation laws, provides that the compensation "to be paid in cases of injury which results in death, shall be paid in installments equal to one-half the average earnings, at the same intervals at which the wages or earnings of the employee were paid; or, if this shall not be feasible, then the installments shall be paid weekly."[29]

The only exception to this method of paying the death benefits is the provision for lump sum payments authorized by Section 9 of the Act, where the Board is authorized to order a lump sum settlement if "it appears to the best interests of the parties that such compensation be so paid."

The Act further provides that the compensation "shall be paid to the persons who form the basis for determining the amount of compensation to be paid by the employer, the respective shares to be in the proportion of their respective dependency at the time of the injury on the earnings of the deceased."[30]

In other words, the widow, child or children form the basis for the payment of compensation to legal dependents under Paragraph (a) of Section 7; and a parent, husband, child or children form the basis for the payment of compensation of those actually and totally dependent under Paragraph (b); and parents, child, children, grandparents or grandchildren form the basis for the payment of compensation under Paragraph (c) for those actually and partially dependent; and any collateral heirs dependent upon the employee form the basis

[27] Williams v. Vauxhall, (1907), 2 K. B. 433, 9 W. C. C. 120; Howell v. Bradford, (1911), 104 L. T. 433, 4 B. W. C. C. 203; Jobson v. Corey & Sons, (1911), 131 L. T. Newsp. 147, 4 B. W. C. C. 284; O'Keefe v. Lovatt, (1901), 18 T. L. R. 57, 4 W. C. C. 109.

[28] Prevention of Destitution (Webb), p. 182.

[29] Paragraph (f), § 7.

[30] Paragraph (g), § 7.

for the payment of compensation under Paragraph (d), the compensation to be "such a percentage of the sum provided in Paragraph (a) of this section as the average annual contributions which the deceased made to the support of such dependent collateral heirs during the two years preceding the injury bears to his average annual earnings during such two years."

If, in any of the classes referred to, there are two or more dependents entitled to compensation, their respective shares are "to be in the proportion of their respective dependency at the time of the injury upon the earnings of the deceased."[31]

The Industrial Commission, or any arbitrator thereof, may in its or his discretion order or award the payment of compensation to the parent or grandparent of the child for the latter's support, the amount of which, but for such order or award, would have been paid to such child; and such order or award may be modified from time to time by the Commission in its discretion with respect to the persons to whom shall be paid the amount of said order or award remaining unpaid at the time of such modification. The payment of the compensation by the employer, in accordance with the order or award of the Industrial Commission, discharges such employer from all obligation for such compensation.[32]

Where any person entitled to compensation lives outside the United States the payment shall be made to the personal representative of the deceased employee, who is required to distribute the compensation to the persons entitled, in accordance with the order of the Industrial Commission.

It is the duty of the Industrial Commission in making an award to determine which of the relatives were dependent upon the deceased employee, and the person or persons entitled to the compensation, even though there is no contest between the respective relatives as to dependency or amount of compensation, if any, payable to each.[33]

[31] Paragraph (g), § 7.

[32] Paragraph (g), § 7.

[33] Pratt v. Industrial Commission, 293 Ill. 367; Paul v. Industrial

§ 148. Burial expenses. Burial expenses, under the Illinois Act, are payable to the undertaker or person incurring the expense of burial only in case there are no legal or actual dependents entitled to compensation. Burial expense and medical expense are to be considered as items of compensation due from the employer on account of industrial accidents; and this item of compensation for burial expense, payable where there are no dependents, is not unconstitutional as requiring payment to other persons than employees.[34]

Under the New York Act, it has been held that where there were no dependents left surviving, the fact that the injured man was paid compensation for a short time prior to his death did not excuse the payment of $100.00 to the state treasurer, provided for under the Act, in cases where there were no persons "entitled to compensation in a case of injury causing death," it being held that the injured man was not such a person.[35]

While the burial expense is one of the benefits prescribed by the compensation law, it has also been held that the payment of it does not operate to relieve the employer or his insurer from payment of a specified sum into a special state fund in cases where there are no dependents.[36]

Under the Illinois law, in cases where there are surviving dependents entitled to compensation, the burial expenses are not chargeable to the employer, the theory of the law being that such expenses shall be paid out of the compensation payable to such dependents.

Commission, 288 Ill. 532; Keller v. Industrial Commission, 291 Ill. 314; Smith-Bohr Coal Co. v. Industrial Commission, 286 Ill. 34; Hammond Co. v. I. C. R. R. Co., 288 Ill. 262.

[34] State Industrial Commission v. Newman, 118 N. E. (N. Y.) 794.

[35] Stempfler v. Rheinfrank Co., 179 N. Y. Supp. 659.

[36] In re State Industrial Commission, 165 N. Y. Supp. 967.

CHAPTER VIII

COMPENSATION FOR DISABILITY

Sec. 8 of the Illinois Act

§ 8. The amount of compensation which shall be paid to the employee for an injury not resulting in death shall be:

(a) The employer shall provide the necessary first aid medical and surgical services; all necessary hospital services during the period for which compensation may be payable; also all necessary medical and surgical services for a period not

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longer than eight weeks, not to exceed, however, an amount of two hundred dollars, and in addition such medical or surgical services in excess of such limits as may be necessary during the time such hospital services are furnished. All of the foregoing services shall be limited to those which are reasonably required to cure and relieve from the effects of the injury. The employee may elect to secure his own physician, surgeon or hospital services at his own expense.

(b) If the period of temporary total incapacity for work lasts for more than six working days, compensation equal to fifty percentum of the earnings, but not less than $7.00 nor more than $12.00 per week, beginning on the eighth day of such temporary total incapacity, and continuing as long as the temporary total incapacity lasts, but not after the amount of compensation paid equals the amount which would have been payable as a death benefit under Paragraph (a), Section 7, if the employee had died as a result of the injury at the time thereof, leaving heirs surviving as provided in said Paragraph (a), Section 7: *Provided,* that in the case where temporary total incapacity for work continues for a period of four weeks from the day of the injury, then compensation shall commence on the day after the injury.

(c) For any serious and permanent disfigurement to the hand, head or face, the employee shall be entitled to compensation for such disfigurement, the amount fixed by agreement or by arbitration in accordance with the provisions of this Act, which amount shall not exceed one-quarter of the amount of the compensation which would have been payable as a death benefit under Paragraph (a), Section 7, if the employee had died as a result of the injury at the time thereof, leaving heirs surviving, as provided in said Paragraph (a), Section 7: *Provided,* that no compensation shall be payable under this paragraph where com-

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pensation is payable under Paragraphs (d), (e) or (f) of this section: *And, provided, further,* that when the disfigurement is to the hand, head or face as a result of any injury, for which injury compensation is not payable under Paragraphs (d), (e) or (f) of this section, compensation for such disfigurement may be had under this paragraph.

(d) If, after the injury has been sustained, the employee as a result thereof becomes partially incapacitated from pursuing his usual and customary line of employment, he shall, except in the cases covered by the specific schedule set forth in Paragraph (e) of this section, receive compensation, subject to the limitations as to time and maximum amounts fixed in Paragraphs (b) and (h) of this section, equal to fifty percentum of the difference between the average amount which he earned before the accident, and the average amount which he is earning or is able to earn in some suitable employment or business after the accident.

(e) For injuries in the following schedule, the employee shall receive in addition to compensation during the period of temporary total incapacity for work resulting from such injury, in accordance with the provisions of Paragraphs (a) and (b) of this section, compensation, for a further period, subject to the limitations as to time and amounts fixed in Paragraphs (b) and (h) of this section, for the specific loss herein mentioned, as follows, but shall not receive any compensation for such injuries under any other provisions of this Act.

1. For the loss of a thumb, or the permanent and complete loss of its use, fifty percentum of the average weekly wage during sixty weeks;

2. For the loss of a first finger, commonly called the index finger, or the permanent and

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complete loss of its use, fifty percentum of the average weekly wage during thirty-five weeks;

3. For the loss of a second finger, or the permanent and complete loss of its use, fifty percentum of the average weekly wage during thirty weeks;

4. For the loss of a third finger, or the permanent and complete loss of its use, fifty percentum of the average weekly wage during twenty weeks;

5. For the loss of a fourth finger, commonly called the little finger, or the permanent and complete loss of its use, fifty percentum of the average weekly wage during fifteen weeks;

6. The loss of the first phalange of the thumb, or of any finger shall be considered to be equal to the loss of one-half of such thumb or finger and compensation shall be one-half the amounts above specified;

7. The loss of more than one phalange shall be considered as the loss of the entire finger or thumb; *Provided, however,* that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand;

8. For the loss of a great toe, fifty percentum of the average weekly wage during thirty weeks;

9. For the loss of one toe other than the great toe, fifty percentum of the average weekly wage during ten weeks, and for the additional loss of one or more toes other than the great toe, fifty percentum of the average weekly wage during an additional ten weeks;

10. The loss of the first phalange of any toe shall be considered to be the equal to the loss of one-half of such toe, and compensation shall be one-half of the amount above specified;

11. The loss of more than one phalange shall be considered as the loss of the entire toe;

12. For the loss of a hand, or the permanent

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and complete loss of its use, fifty percentum of the average weekly wage during one hundred and fifty weeks;

13. For the loss of an arm or the permanent and complete loss of its use, fifty percentum of the average weekly wage during two hundred weeks;

14. For the loss of a foot, or the permanent and complete loss of its use, fifty percentum of the average weekly wage during one hundred and twenty-five weeks;

15. For the loss of a leg, or the permanent and complete loss of its use, fifty percentum of the average weekly wage during one hundred and seventy-five weeks;

16. For the loss of the sight of an eye or for the permanent and complete loss of its use, fifty percentum of the average weekly wage during one hundred weeks;

17. For the permanent partial loss of use of a member or sight of an eye, fifty percentum of the average weekly wage during that portion of the number of weeks in the foregoing schedule provided for the loss of such member or sight of an eye which the partial loss of use thereof bears to the total loss of use of such member or sight of eye.

18. The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof, or the permanent and complete loss of use thereof, shall constitute total and permanent disability, to be compensated according to the compensation fixed by Paragraph (f) of this section: *Provided,* that these specific cases of total and permanent disability shall not be construed as excluding other cases.

(f) In case of complete disability, which renders the employee wholly and permanently incapable of work, compensation equal to fifty percentum of his earnings, but not less than $7.00

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nor more than $12.00 per week, commencing on the day after the injury, and continuing until the amount paid equals the amount which would have been payable as a death benefit under Paragraph (a), Section 7, if the employee had died as a result of the injury at the time thereof, leaving heirs surviving as provided in said Paragraph (a), Section 7, and thereafter a pension during life annually equal to 8 per cent of the amount which would have been payable as a death benefit under Paragraph (a), Section 7, if the employee had died as a result of the injury at the time thereof, leaving heirs surviving, as provided in said Paragraph (a), Section 7. Such pension shall not be less than $10.00 per month and shall be payable monthly.

(g) In case death occurs as a result of the injury before the total of the payments made equals the amount payable as a death benefit, then in case the employee leaves any widow, child, or children, parents, grandparents or other lineal heirs, entitled to compensation under Section 7, the difference between the compensation for death and the sum of the payments made to the employee shall be paid, at the option of the employer, either to the personal representative or to the beneficiaries of the deceased employee, and distributed, as provided in Paragraph (f) of Section 7, but in no case shall the amount payable under this paragraph be less than $500.00.

(h) In no event shall the compensation to be paid exceed fifty percentum of the average weekly wage or exceed $12.00 per week in amount; nor, except in case of complete disability, as defined above, shall any payments extend over a period of more than eight years from the date of the accident. In case an injured employee shall be incompetent at the time when any right or privilege accrues to him under the provisions of this Act a conservator or guardian may be ap-

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pointed, pursuant to law, and may, on behalf of such incompetent, claim and exercise any such right or privilege with the same force and effect as if the employee himself had been competent and had claimed or exercised said right or privilege; and no limitations of time by this Act provided shall run so long as said incompetent employee is without a conservator or a guardian.

(i) All compensation provided for in Paragraphs (b), (c), (d), (e), and (f) of this section, other than cases of pension for life, shall be paid in installments at the same intervals at which the wages or earnings of the employee were paid at the time of the injury, or if this shall not be feasible, then the installments shall be paid weekly.

(j) 1. Wherever in this section there is a provision for fifty percentum, such percentum shall be increased five percentum for each child of the employee under 16 years of age at the time of the injury to the employee until such percentum shall reach a maximum of sixty-five percentum.

2. Wherever in this section a weekly minimum of $7.00 is provided, such minimum shall be increased in the following cases to the following amounts:

$8.00 in case of any employee having one child under the age of 16 years at the time of the injury to the employee;

$9.00 in a case of an employee having two children under the age of 16 years at the time of the injury to the employee;

$10.00 in a case of an employee having three or more children under the age of 16 years at the time of the injury to the employee.

3. Wherever in this section a weekly maximum of $12.00 is provided, such maximum shall be increased in the following cases to the following amounts:

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$13.00 in case of an employee with one child under the age of 16 years at the time of the injury to the employee;

$14.00 in case of an employee with two children under the age of 16 years at the time of injury to the employee.

$15.00 in case of an employee with three or more children under the age of 16 years at the time of injury to the employee.

4. The increases in the above percentum and the minimum and maximum amounts shall be paid so long as the child upon which the increase is based remains under the age of 16 years. [Amended by Act approved June 28, 1919.

§ 149. Medical service. Paragraph (a) of Section 8 of the Illinois Act provides that the employer shall furnish:

(1) First aid medical and surgical services; and,

(2) All necessary hospital services during the period for which compensation may be payable; also all necessary medical and surgical services for a period not longer than eight weeks—not to exceed, however, an amount over $200.00; and, in addition, such medical or surgical services in excess of such limitation as may be necessary during the time such hospital services are furnished; all such services to be limited, however, to what is reasonably required to cure and relieve from the effects of the injury.

It is also provided that the employee may secure his own physician, surgeon and hospital, at his own expense.

The effect of the provision is that first aid services must be rendered in all cases requiring such service, and that full hospital service shall be rendered during the entire period when compensation may be payable without any other time limit than such period, and full medical and surgical service during confinement in a hospital; but in other cases the medical and surgical service shall be limited to a period of eight weeks, and

the expense of such service in all cases is not to exceed the amount of $200.00; and also in all cases, such medical, surgical or hospital service shall be only such as may reasonably be required to cure and relieve from the effects of the injury.[1]

If the employer is to be chargeable with the expenses of medical, surgical and hospital service, in accordance with the statute, he has the right, in the first instance, to select the persons and instrumentalities to furnish such service.

First aid service is generally recognized as temporary medical or surgical service rendered in case of emergency, either by physicians or other persons competent to give it. The importance of offering immediate relief to injured workmen in case of injuries received in industry and to protect them against possible infection has induced many employers and insurance carriers to provide first aid outfits and to arrange for the instruction of certain persons at the plant or place of employment in the giving of first aid in emergency cases, before the patient can be given into the hands of a physician or removed to his home or to a hospital when circumstances require it. Whether such service is rendered by a layman or by a physician in such emergency cases, it is properly called first aid treatment within the meaning of the statute and the law requires this temporary emergency service in addition to the regular stated medical or surgical attention which may later be necessary properly to cure and relieve the injured workman from the effects of the injury. The fact that this temporary emergency service is rendered by a physician does not make it any the less first aid treatment, the controlling feature being its temporary or emergency character rather than the person by whom, or the place where, it is furnished.

Before the employer can be held liable for medical aid furnished an injured employee he must be given

[1] See Butler Street F. & I. Co. v. Industrial Board, 277 Ill. 70, 15 N. C. C. A. 127, 486; In re Huxen & Maryland Casualty Co., 115 N. E. (Mass.) 426, 15 N. C. C. A. 121, 124.

reasonable notice of the injury before such medical aid is rendered. The obvious purpose of requiring such notice is to give the employer an opportunity to select and contract with a physician of his own choosing, whose services he has a right to furnish, and which it is his duty to furnish, as a part of the compensation benefits.[2]

A claim for medical service is a claim for compensation and is a part of the benefits given by the Act.[3]

The employee cannot recover for medical expense furnished by himself unless he proves he first called upon the employer to furnish it;[4] and the Industrial Board has no authority to order the treatment of the injured man at the employer's expense.[5]

The posting of a notice in the plant of the employer to the effect that injured employees should go to a designated hospital for treatment has been held to be a sufficient offer of medical service and if an injured employee, under such circumstances, hires his own physician, he will be obliged to pay him.[6]

Medical service being a part of the compensation provided by the Act, it is controlled by it as to the amount the employer is required to pay and beyond that amount the Act has no application to the subject and any obligations growing out of such service are not controlled by the Act.[7] This provision of the Act supersedes the common law liability which would accrue against the employer; and no action at law can be maintained for such medical service. Being a portion of the compensation benefits, the expense of such service can only be recovered in accordance with the methods provided for the enforcement and payment of compensation under the Act.[8]

[2] American Indemnity Co. v. Nelson, 201 S. W. (Tex.) 686.

[3] Central Locomotive & Car Works v. Industrial Commission, 290 Ill. 436.

[4] Goldflam v. Kazemier & Uhl, Inc., 168 N. Y. S. 87.

[5] Born & Co. v. Durr, 116 N. E. (Ind. App.) 428, 15 N. C. C. A. 122; In re Henderson, 116 N. E. (Ind. App.) 315, 15 N. C. C. A. 123.

[6] In re Davidson, 117 N. E. (Mass.) 310, 15 N. C. C. A. 117.

[7] Holland v. Zeuner, 117 N. E. (Mass.) 1, 15 N. C. C. A. 126.

[8] Semmen v. Butterick Pub. Co., 166 N. Y. S. 993, 15 N. C. C. A. 125.

It is the duty of the employer to furnish the service within the time fixed in the statute and, when so furnished, the law requires him to pay for such service only during such time.[9] If the employer pays an amount in excess of the requirements of the statute, he is not entitled to deduct the excess from the amount of compensation awarded, unless there is an independent agreement or understanding to that effect.[10]

It has been held that in cases of emergency, however, where there is not a reasonable opportunity to first advise the employer that medical attention is required and if necessary medical care is procured by the employee, the employer will be responsible therefor.[11] And it has been held in Pennsylvania that compensation will not be forfeited for refusal of medical attendance offered by the employer if there is no increase in incapacity due to such refusal.[12] But where the employer has reasonable notice of the accident, it is incumbent upon him to furnish or offer necessary medical, surgical or hospital treatment.

The statute provides that the "employer shall provide" such service, and proper notice being given to the employer the employee is not required to request medical service of the employer.[13]

If, after receiving such reasonable notice, the employer neglects or refuses to furnish the required treatment, the employee may furnish his own physician at the employer's expense, within the limits of the Compensation Act, but under no other circumstances.[14]

It has been held that where the employer tells the injured man to go to a certain hospital and he goes to another, the employer cannot be held responsible and his

9 Swift & Co. v. Industrial Commission, 288 Ill. 132.

10 Crescent Coal Co. v. Industrial Commission, 286 Ill. 102.

11 Gage v. Board of Control of Pontiac State Hospital, 172 N. W. (Mich.) 530.

12 Neary v. Philadelphia & Reading Coal & Iron Co., 107 Atl. (Pa.) 696.

13 Gardner v. State Printing Office—Cal. Industrial Acc. Com. Case, No. 22, April 1st, 1914.

14 Junk v. Terry & Tench Co., 163 N. Y. S. 836, 15 N. C. C. A. 114; Radil v. Morris Co., 170 N. W. (Nebr.) 363; Goldflam v. Kazenier & Uhl, Inc., 168 N. Y. S. 87.

refusal to pay the hospital bill is not a refusal to furnish proper medical service, although the injured man claimed he went to the wrong hospital by mistake and through ignorance, not being able to read, write or speak the English language.[15]

If the employer permits the employee to engage his own physician he will be liable, according to the terms of the Act, for the service rendered by such physician.[16]

If the statute requires medical service to be furnished for a specified period, such period may not be divided into parts, some of which may reach into a period beyond the time specified in the statute.[17] But in California, where the Act provides that "such medical and surgical treatment, medicines, medical and surgical appliances, crutches or apparatus shall be furnished as may be reasonably required at the time of the injury and thereafter during the disability, but not exceeding ninety days," etc., the Industrial Accident Board held that the ninety days' service must be furnished, even though it ran beyond ninety days from the date of the injury, "that the ninety days should be counted from the beginning of the period of disability."[18] But where the period for medical service begins with the "injury," the general rule is that the injury is to be held as concurrent with the date of the accident.[19] But in Indiana it has been held that the "injury" takes place, so far as the duty to furnish medical service is concerned, at the time such injury manifests itself, and not necessarily on the date of accident.[20]

Where an employer authorizes a physician to treat

15 Cella v. Industrial Acc. Com., 177 Cal. 490.

16 In re Ripley, 118 N. E. (Mass.) 638, 16 N. C. C. A. 754.

17 Shoemaker Co. v. Kendrew, 120 N. E. (Ind. App.) 772.

18 Stevens v. Pacific Telephone & Telegraph Co., Report Cases Cal. Industrial Acc. Board, No. 7, Oct. 22, 1912. See also In re Harry Hart, Bulletin No. 3, Michigan Industrial Acc. Board, p. 18.

19 McMillen v. Gavette Construction Co., 166 N. W. (Mich.) 1019, 16 N. C. C. A. 746; Green v. Buick Motor Co., 166 N. W. (Mich.) 1028; see also Epsten v. Hancock-Epsten Co., 163 N. W. (Nebr.) 767, 15 N. C. C. A. 122.

20 In re McCasky, 117 N. E. (Ind.) 268, 15 N. C. C. A. 113.

the injured workman he, of course, may be liable *to the physician* beyond the statutory limit, unless he expressly limits his liability to the requirements of the Compensation Act.[21] But a suit for medical service performed, where the service is within the period and amount fixed by the Act, cannot be maintained directly by the physician performing the service, because it is a claim for compensation and should be made by the claimant entitled to compensation, in accordance with the practice prescribed by the Act.[22]

Any questions arising upon a contract between an insurance carrier and a doctor or hospital, to which the employee is not a party, have no place in proceedings under the Compensation Act, and such private arrangements are not material in a compensation proceeding. The compensation law is designed to furnish medical service and provides a special proceeding, summary and speedy in its nature, for the recovery by the injured workman of his compensation, including the statutory medical services; and the statute, rather than any private contract between the employer and a doctor or hospital, is the thing that controls both the responsibility of the employer and the rights of the employee.[23]

Under a general provision of this character requiring necessary medical and surgical service and apparatus, the injured workman would not be justified in arbitrarily demanding service or apparatus which he could not reasonably use or did not need.[24]

§ 150. Waiting period,—first week exempt. Except in cases of complete and permanent disability,[25] and temporary total incapacity continuing for less than four weeks[26] no compensation is payable under the Illinois Act for disability during the first week. If the tempor-

[21] In re Myers, 116 N. E. (Ind. App.) 314; Kirkoff Bros., etc., v. McCool, 116 N. E. (Ind. App.) 439, 15 N. C. C. A. 120, 128.

[22] Hirsch v. Zurich G. A. & L. I. Co., 161 N. Y. S. 380, 15 N. C. C. A. 125.

[23] Hull v. United States Fidelity & Guaranty Co., 166 N. W. (Nebr.) 628.

[24] Kunasek v. N. Y. Consolidated Card Co., 162 N. Y. S. 361, 15 N. C. C. A. 115.

[25] Paragraph (f).

[26] Paragraph (b).

ary total incapacity for work continues for a period of four weeks from the day of the injury, compensation shall commence the day after the injury,[27] and in cases of complete and permanent disability the compensation begins the day after the injury.[28]

The obvious purpose of this waiting period is to discourage intentional self-inflicted injuries, simulation and malingering. In the testimony taken by a British Departmental Committee in 1904, we find a substantial amount of malingering alleged, but not enough seriously to discredit the system. It is said that malingering has increased under the Act of 1906 because it reduces the exemption period from two weeks to one, and if disability lasts two weeks, allows compensation from the date of the accident.[29] A report of a special commission of 1905 accompanying proposed amendments to the Italian compensation law asserts that workmen frequently, not to say generally, display a tendency to exaggerate and prolong the effects of accidents, "and furthermore simulation is not infrequent, especially lumbago, muscular distentions and nervous affections. In certain centers, Rome for example, simulation has reached such a degree of frequency and perfection that eminent medical experts and alienists such as Professors Parisotti and Mingazzi have gone so far as to suppose the existence of an actual medical school of simulation, a supposition which suffices to account for the extremely clever doings of workmen who, calling scientific ideas to their aid, know how to give illusions of the gravest affections though they merely have slight injuries."[30]

In France, a new word, "*sinistrose*," has been coined to define the fraudulent practices developed by the compensation law,[31] and the average of time lost by accident has risen from 17 days in 1890 to 23 days in 1907.[32]

The German system, with its workmen's contributions

[27] Paragraph (b).
[28] Paragraph (f).
[29] Jour. of Ins. Inst. of London, 1909-10, p. 59.
[30] *Bulletin des Assurances Sociales*, 1908, No. 1, p. 193.
[31] *La France Judiciaire*, Mar. 12, 1910, p. 35.
[32] *VIII Congres des Assurances Sociales*, 790.

for accidents of less than three months' disablement and its administration by associated employers should and does lessen opportunity for fraud, but fraud is not unknown.[33]

With the single exception of Oregon, the compensation laws of the American states provide a waiting period, ranging from three days in Utah and in the Federal Act, to two weeks.

As to foreign countries, eight provide for compensation for all injuries involving any loss of working time, most important among these being Italy, Russia, and Spain. In most countries, however, a "waiting time" is fixed, beyond which disability must extend in order to entitle the injured workman to compensation. This waiting time varies greatly, from 2 days, for example, in the Netherlands and Switzerland up to 60 days in Sweden and 13 weeks in Denmark.

In the following statement is shown for each country the length of disability necessary under the law to entitle the injured workman to compensation. In this statement no note is made of provisions for benefits in the form of medical treatment, medicines, etc.

LENGTH OF ACCIDENT DISABILITY NECESSARY TO ENTITLE INJURED EMPLOYEES TO BENEFITS.

All injuries:
- Italy.
- Liechtenstein.
- Mexico—Nuevo Leon.
- Peru.
- Portugal.
- Russia.
- Servia.
- Spain.
- Venezuela.

Over 2 days:
- Netherlands.
- Switzerland.

More than 3 days:
- Austria.
- Cape of Good Hope.
- Germany.
- Hungary.
- Luxemburg.
- Norway.

More than 4 days:
- Greece.

Five or more days:
- France.

More than 6 days:
- Finland.

[33] *VIII Congres des Assurances Sociales*, 138.

At least 1 week:
Great Britain.
Newfoundland.
New Zealand.
South Australia.
Tasmania.
Over 1 week:
Belgium.
Quebec (over 7 days).
Transvaal.
At least 2 weeks:
Alberta.
British Columbia.
Queensland.
Western Australia.
New South Wales.
More than 2 weeks:
Manitoba.
Nova Scotia.
Roumania.
More than 60 days:
Sweden.
Over 13 weeks:
Denmark.[34]

The danger of simulation and malingering would seem to be serious enough to call for solicitude on the part of the legislature, and special statutory provisions designed to discourage them.

In a *bona fide* case of actual incapacity, it is held that the voluntary payment of part or all of the employee's wages by the employer within the exemption period, will not bring the case within the operation of the statute, and deprive the employer of his rights under the Act.[35] To quote the language of an English court: "The meaning of Sec. 1 (2) (a) in my judgment is that if the accident be of such a nature that the man is by law entitled during the two weeks immediately following the accident to recover full wages from his master at the work at which he was employed as before the accident, then such an accident is not to give rise to a claim by the workman against his master under the Act; * * * and if the master out of feelings of compassion and generosity, which happily is often the case, continues to pay the full wages, though not under legal obligation to do so, that does not bring the case within the subsection."[36]

[34] Bulletin U. S. Bureau of Labor Stat. No. 126, p. 131.

[35] Chandler v. Smith, (1899), 2 Q. B. 506, 1 W. C. C. 19.

[36] *Ibid.* See also Ohio Oil Co. v. Industrial Com., 293 Ill. 461.—Note: *Neurasthenia*, is not malingering. Eaves v. B. Colliery Co., (1909), 2 K. B. 73, 2 B. W. C. C. 329.

On the other hand it has been held that a courageous workman who sticks to his task, notwithstanding his pain and injury is not to be penalized for so doing, even though the injured workman, with the gratuitious help of his fellow workmen can still earn as much as he was accustomed to before the accident, and that the injured workman is not compelled to "lay off" in order to protect his rights.[37]

§ 151. Incapacity. The fundamental purpose of the Workmen's Compensation Act is to furnish partial relief to those workmen and their dependents whose *earning capacity* has been reduced, either temporarily or permanently by an injury suffered in the employment. All of the compensation laws classify injuries in accordance with the degree of incapacity resulting therefrom, but in all cases there must be proof of incapacity and if the workman's usefulness as a workman, or his opportunities for earning wages, are not impaired or affected, he is not entitled to compensation.[38] And, although there may be partial functional impairment of a part of the body, if the employee is able to and does return to his work, or makes no effort to get work elsewhere, the incapacity is not proved.[39]

Where the ultimate results of an injury as to whether incapacity will result or not are uncertain at the time of the hearing for compensation, it should be continued and held within the jurisdiction of the arbitrator or Board until the final result may be determined.[40]

§ 152. Temporary total incapacity. Paragraph (b) of Section 8 of the Illinois Act provides that if the period of temporary total incapacity for work lasts for more than six working days, compensation shall be paid beginning on the 8th day of such temporary total incapacity, and shall continue as long as such incapacity lasts, but not to exceed the amount payable as the death benefit; and if such temporary total incapacity continues for

[37] Raffaghelle v. Russell, 176 Pac. (Kan.) 640.

[38] Centlivre Beverage Co. v. Ross, 125 N. E. (Ind. App.) 220.

[39] In re Lacine, 116 N. E. (Mass.) 485, 16 N. C. C. A. 809.

[40] Arcangelo v. Gallo & Laguidara, 163 N. Y. S. 727, 16 N. C. C. A. 753.

a period of four weeks from the day of the injury, such compensation shall commence on the day of the injury. This provision covering temporary total incapacity is designed to cover the healing period of all injuries sustained for the time in which the workman is incapable of doing his work, except such cases as are expressly covered by other provisions of the section relating to disability.[41] The injured workman is not entitled to recover under this provision for temporary total incapacity for a certain period and then, in case the disability becomes permanent, also to recover in addition for total disability.[42] Temporary, as distinguished from permanent disability, is a condition that exists until the injured workman is as far restored as the permanent character of his injuries will permit.[43]

All known classes of incapacity for work are definitely defined in the section and compensation is payable for a particular injury sustained, in accordance with the scale of compensation provided for each class, and double compensation is not contemplated or permitted.[44]

§ 153. Disfigurement. Paragraph (c) of Section 8 of the Illinois Act provides compensation for serious and permanent disfigurement to the hand, head or face of the employee, the amount to be fixed by agreement or by arbitration under the Act, which amount shall not exceed one-quarter of the amount payable as a death benefit; and it is expressly provided that compensation for disfigurement shall not be payable in cases where compensation is payable for either partial permanent disability or specific loss or loss of use of members of the body, or total disability.

As elsewhere pointed out, one of the factors in earning ability is the ability of the individual to compete in the labor market, and it is, of course, true that many injuries to the hands, head or face are of such character

41 Moustgaard v. Industrial Commission, 287 Ill. 156.

42 Marhoffer v. Marhoffer, 220 N. Y. 543, 116 N. E. 379.

43 Vishney v. Empire Steel & Iron Co., 87 N. J. L. 481, 11 N. C. C. A. 427.

44 In re Denton & Good, 117 N. E. (Ind. App.) 520.

as to place a man at a decided disadvantage when applying for work in competition with other workmen. This being true, a provision for compensation for disfigurement is not wholly inconsistent with the fundamental principles of workmen's compensation, the payments of which are based upon reduction in the earning capacity of the injured workman. For example, it has been said that any physical impairment, whether it immediately affects the earning capacity or not, may be taken into consideration by the State in ascertaining the amount of compensation in particular cases; and hence the disfigurement clause is not unreasonable, arbitrary or contrary to fundamental rights and does not exceed the constitutional limitations upon state power.[45]

It is not necessary that there be actual present disability or incapacity following the disfiguring injury, the intent of the law obviously being that the disfigurement benefits should compensate the injured employee for the probable future disadvantage which he would sustain in competition with other workmen in the labor market on account of such serious and permanent disfigurement.

The Appellate Court of Illinois, in considering this subject, said:

"Under appellant's construction of the law (of 1912) he * * * could not recover under that clause because there would appear no comparative loss in his earnings. The Legislature should not be held to intend such a result unless its language admits no other reasonable construction, and we are of the opinion that the language in clause (c) can be reasonably construed as providing compensation for the disfigurement in such cases." [46]

No award can be made for permanent disability, however, in view of the express proviso of the paragraph

[45] New York Central R. Co. v. Biane American Knitting Co., 40 Sup. Court (N. Y.) 44; Sweeting v. American Knife Co., 123 N. E. (N. Y.) 82.

[46] Stevenson v. Illinois Watch Case Co., 186 Ill. App. 418, 5 N. C. C. A. 858, holding injury to finger tips is disfigurement; see also Walters v. Kroehler Mfg. Co., 187 Ill. App. 548, 16 N. C. C. A. 482.

to the contrary, when an allowance is made for disfigurement.[47] But the claimant cannot be compelled to elect which he shall claim. He may prove his case and the Industrial Commission can make the award for the compensation he is entitled to.[48]

Nor can an award be made for such disfigurement where compensation is also awarded for permanent partial loss of earning capacity resulting from the same injury.[49] But where one sustains injuries which seriously and permanently disfigure his hands, head or face but do not incapacitate him, and at the same time sustains injuries to other parts of the body which do result in disability, he may in that case recover for both.[50]

The fixing of the award for serious and permanent disfigurement is within the jurisdiction of the Industrial Commission, and the question of what the amount should be is not subject to review by the Courts, except for fraud, when an award is within the statutory limit.[51]

In some states the rule is that the disfigurement must affect the earning capacity of the injured workman. For example, the Wisconsin Act provides compensation for disfigurement if it is such "as to occasion loss of wage."[52] Under such provisions it would doubtless be necessary to prove an immediate loss of wage earning capacity following the injury, rather than a mere anticipated disadvantage accruing to the injured workman in securing employment in the future in competition with other workman.

Any agreement made in settlement of a claim for compensation because of disfigurement would bind the parties thereto and would not be subject to review by the Industrial Board because the Board is only authorized to review agreements in settlement of compensation claims "on the ground that the disability of the em-

47 Stubbs v. Industrial Board, 280 Ill. 208, 16 N. C. C. A. 481, 482.

48 *Ibid.*

49 Smith-Lohr Coal Mining Co. v. Industrial Commission, 291 Ill. 355.

50 Wells Bros. Co. v. Industrial Commission, 285 Ill. 647.

51 Stubbs v. Industrial Commission, 289 Ill. 525, 16 N. C. C. A. 481, 482.

52 § 2394-9 (f).

ployee has subsequently recurred, increased, diminished or ended." Disfigurement is not a disability as that term is generally used, at least in the absence of proof that it prevents or interferes with the workmen's re-employment.[53] And disfigurement is a fixed and permanent condition and, therefore, not subject to the changes contemplated as calling for a review by the Board for the purpose of increasing or reducing compensation payments. There is no authority given for the private settlement of disfigurement claims by the payment of a lump sum, however, on the contrary, it is expressly provided by Sec. 8, paragraph (i) that all compensation shall be paid in installments and this is subject only to the express provisions of Sec. 9 authorizing the Industrial Board to order lump sum payments in all cases where "it appears to the best interest of the parties." Settlement of disfigurement claims upon a lump sum basis must, therefore, be upon proper petition to the Industrial Commission.

§ 154. Partial permanent incapacity. Paragraph (d) of Sec. 8 of the Illinois Act provides compensation for partial incapacity "from pursuing his usual and customary line of employment," such compensation to equal 50% of the difference between the average amount which the employee earned before the accident and the average amount which he is earning or is able to earn in some suitable employment or business after the accident. This provision again pays compensation on the same percentage, and is based upon the same principle of incapacity which is applied to the other classes of disability enumerated in the section. Compensation for permanent partial disability and also for specific loss of use of a member of the body cannot be awarded where both result from the same injury.[54]

Where the injury sustained is a permanent one it cannot be made a case of partial incapacity by reason of the fact that the workman sustained a previous injury

[53] Ball v. Hunt, 5 B. W. C. C. 459, (1912), A. C. 496.

[54] Slago Coal Co. v. Industrial Com., 293 Ill. 271.

for which he might have recovered compensation. For example, the fact that one finger had previously been injured and partly amputated, and the injured employee might have recovered for that injury, would not operate to reduce the amount of compensation to which he was entitled.[55] However, if an injured man receives some amount within the maximum for partial permanent disability and later on receives another partial permanent injury to another part of the body, he will only be entitled to the difference between the amount paid for the first injury and the maximum allowed by the law for partial permanent disability.[56]

Under the New Jersey law it has been held that recovery may be had for both partial permanent and temporary disability, although the total may exceed the maximum recoverable for permanent and total disability, on the theory that the two injuries are different in character, although the result of the same accident.[57]

In Wisconsin it is held that where an employee is totally disabled from doing the particular work which he was performing when the injury occurred, he is entitled to recover the maximum allowance for total disability, no matter what his earning capacity may be in other callings.[58]

Some statutes fix a minimum amount to be paid in partial disability cases. In such cases it has been held that the fact that the employee subsequent to the injury, actually receives more than he was paid at the time of the accident, will not deprive him of his right to the minimum allowed by the act.[59] And a finding of a certain percentage of impairment as to a particular employee will not be disturbed, even though as to some men the impairment would be less.[60]

[55] Mark Mfg. Co. v. Industrial Commission, 286 Ill. 620.

[56] Bigland v. Industrial Insurance Commission, 182 Pac. (Wash.) 934.

[57] Nitrain Co. v. Creagh, 86 Atl. (N. J.) 435.

[58] Mellen Lumber Co. v. Industrial Commission, 142 N. W. (Wis.) 187, 11 N. C. C. A. 435.

[59] Hood v. American Ref. Transit Co., 186 Pac. (Kan.) 977.

[60] Globe Indemnity Co. v. Industrial Commission, 186 Pac. (Col.) 522. *Note:* In support of the rule

§ 155. "Average amount which he earned before the accident,"—construed. The language of the English Act is "earnings before the accident."[61] Under this language it has been held that in making the computation for compensation, earnings cannot be affected by fluctuations in the wage scale which may have occurred since the accident. Thus, where a workman was receiving 1 pound and 14 shillings before the accident, and was taken back to work after the accident at a wage of 1 pound, 9 shillings and 5 pence, that being at the time the regular scale of wages paid for the kind of work done, it was held that his average weekly earnings were not subject to the variation in the fall of wages, and that it was a matter of discretion with the county court judge whether under the circumstances he would award any substantial compensation, and if so, what amount it should be.[62]

§ 156. Average amount of earnings after the accident. In fixing the amount of compensation with reference to possible earnings after the accident, all the circumstances surrounding wage conditions after the accident are proper to be considered. For example, a partially incapacitated miner had earned before the accident nearly 3 pounds per week. At the time of the employer's application for review, he was earning 1 pound and 16 shillings per week. The Eight Hour Act had come into effect since the accident, and had lowered the rate of miners' wages, so that the workman would only have

that the disability is to be determined by claimant's general impairment of earning capacity, without respect to any particular kind of employment, see: Grammici v. Zinn, 219 N. Y. 322; Boscarino v. C. & D. Inc., 220 N. Y. 323, 14 N. C. C. A. 145; Modra v. Little, 223 N. Y. 452, 17 N. C. C. A. 249, 255; and in support of the rule that the degree of disability is to be determined by the claimant's impairment of earning capacity as it relates to the kind of labor at which he was employed when injured, see: Duprey v. Maryland Cas. Co., 219 Mass. 189, 11 N. C. C. A. 55; Gillen v. O. A. & G. Corp., 215 Mass. 96; Foley v. Detroit United Ry. Co., 190 Mich. 507, 14 N. C. C. A. 149; Jameson v. Walter S. Newhall Co., 166 N. W. (Mich.) 834.

[61] Sched. I, 6 Edw. VII, Chap. 58.

[62] Jamieson v. Fife Coal Co., (1903), 5 F. 958; James v. Ocean Coal Co., (1904), 2 K. B. 213, 6 W. C. C. 128; Merry & Cunningham v. Black, (1909), S. C. 1150, 2 B. W. C. C. 372; Dobby v. Wilson, (1909), 2 B. W. C. C. 370; Cardiff v. Hall, (1911), 1 K. B. 1009, 4 B. W. C. C. 159.

been earning 2 pounds per week, if he had never had the accident. It was held that these facts should be taken into consideration.[63]

What the workman would "probably" have received as wages, however, if he had not met with the accident, should not be considered.[64] Nor is it proper to consider that the workman would have been receiving a reduced wage, by reason of his advanced age.[65]

Expected increase of wages beyond the anticipated period of the employee's disability should not be considered.[66]

But it has been held that there was no error in considering the appearance of the employee, in passing upon the question whether his seeming intelligence, health and aptitude for work would have been likely to receive recognition by increase in wages by the employer, if the injury had not been sustained.[67]

The fact that the workman received more wages after the accident, due to subsequent schooling and training, is not conclusive of his right to compensation as for partial disability.[68]

It has also been held that the fact that the employee is able, after the accident, to find more remunerative employment, is not conclusive as to his right to recover compensation, especially if the wage scale has been increased, and there is in fact disability which did not exist prior to the accident.[69]

§ 157. "Some suitable employment or business,"—construed. While it was formerly held in England that the words "employment or business" might include any

[63] Bevan v. Energlyn Colliery Co., (1912), 1 K. B. 63, 5 B. W. C. C. 169.

[64] Pomphrey v. Southwark, (1901), 1 Q. B. 86, 3 W. C. C. 194; *contra*, in Scotland: Freeland v. MacFarlane, (1900), 2 F. 832, 37 S. L. R. 599.

[65] Jamieson v. Fife, (1903), 5 F. 958.

[66] Ide v. Faul & Timmins, 166 N. Y. Supp. 858, 17 N. C. C. A. 730.

[67] In re Gaynor, 117 N. E. (Mass.) 321, 11 N. C. C. A. 368. See also: Dennis v. Cafferty, 163 Pac. (Kan.) 461, 15 N. C. C. A. 1068.

[68] Epstein v. Hancock-Epstein Co., 163 N. W. (Nebr.) 767, 15 N. C. C. A. 122.

[69] Lombard v. Ulrich, 172 Pac. (Kan.) 32, 16 N. C. C. A. 807.

business which the employee entered into on his own account,[70] doubt is thrown upon this construction in a later case,[71] where the construction of the earlier case is considerably limited. In this later decision, the English Court of Appeal in discussing the question, and in referring to its prior decision, says:

"A complication arises in this case by reason of the fact that the workman has ceased to be in employment, and is setting up in business for himself, and we have been referred to the case of Norman & Burt v. Walder (1904) 2 K. B. 27, 6 W. C. C. 124, as an authority that in such a case the earnings in a business may be taken into consideration in fixing the amount of compensation. The decision in this case is of course binding upon me, and I do not wish to express any dissent from it, but at the same time I do not understand it to mean that you can in all cases take the actual profits of a business which an ex-workman has set up as 'earnings' for the purpose of calculating compensation. It would be most unfair so to do as a general rule, and the unfairness might tell against the workman or against the employer according to the circumstances of the case. The workman might be employing capital of his own in the business, the profits of which the employer ought not to be able to appeal to in reduction of compensation for incapacity; and on the other hand, the business might be unsuccessful and the profits might inadequately represent the earning power of the workman as a workman. I am inclined to think that the phrase in para. 3, 'the average weekly amount which he is earning or is able to earn in some suitable employment or business after the accident' refers to the value of the work which the workman is doing in his own business, that is to say, the wages which he would have to give to a suitable man for performing the services therein which he himself is performing."[72]

The rule here announced is in exact accord with the decision of the Court of Session, and would seem to be

[70] Norman & Burt v. Walder, (1904), 2 K. B. 27, 6 W. C. C. 124.

[71] Calico Printers Assn. v. Higham, (1912), 1 K. B. 93, 5 B. W. C. C. 97.

[72] *Ibid.*

supported by the better reasoning. For example the Court of Session remitted a case where compensation had been refused on the ground that the profits of the workman's business exceeded his former earnings, with directions to ascertain what services the workman actually performed in the business, and what those services would have been worth if, instead of serving himself, he had been serving an employer.[73]

§ 158. The suitability of the employment, "is a question of fact in each case for the learned judge, having regard not merely to the physical condition of the man, but also to the nature and character of his occupation before the accident, and the nature of the work which is offered after the accident."[74] "You cannot consider an employment suitable that a reasonably careful man desirous of earning his living is entitled to reject because it exposes him to risks so serious in their consequences that he feels he is not doing his duty to himself and his family in encountering them."[75]

An employee may be entitled to recover for total disability notwithstanding his ability to make money in superintending or overseeing some business entirely foreign to his former employment; the meaning of the words "other suitable employment" being held, in Wisconsin, to relate to manual or other labor.[76]

An engineer in a mine, earning 2 pounds per week, met with an accident which caused the first finger of his left hand to become permanently stiff. He was paid compensation during total incapacity. Payment was stopped, and he commenced proceedings, and was awarded 7s 6d per week, on the ground that although his former employment was too dangerous for him to resume, he was fit for some light work. He tried to obtain light work, but failed, and applied to have his compensation increased. The employers submitted to

[73] Patterson v. Moore, (1910), S. C. 29, 3 B. W. C. C. 541.

[74] Eyre v. Houghton, (1910), 1 K. B. 695, 697, 3 B. W. C. C. 250.

[75] *Ibid*, p. 700.

[76] McDonald v. Industrial Commission, 162 N. W. (Wis.) 345; see similar rulings under the Kansas act: Moore v. Peet Bros. Mfg. Co., 162 Pac. (Kan.) 295, 14 N. C. C. A. 352; Salvan v. Battale, 164 Pac. (Kan.) 1086, 15 N. C. C. A. 1070.

an award of 1 pound per week. They then offered him different work, but at his old wages. The workman refused this, unless the employers would guarantee to pay him his old wages for whatever work they might put him to. They refused to do this and applied to have the payments terminated on the ground that the man could do his full, old work. The county court judge found that the workman could do his old work, but that it would be dangerous for him, and that therefore it was not a suitable employment, and the Court of Appeal held there was evidence to support the finding.[77]

§ 159. "Able to earn,"—construed. We have elsewhere seen that one of the important factors in the earning capacity of the workman is his ability to compete in the labor market.[78]

In other words, the fact of incapacity is not negatived by proof merely of physical ability to earn something. It must also appear that the man's opportunity for *getting work,* has not been materially lessened by the injury.[79]

§ 160. Re-employment. The fact that the employer has taken the workman back to work at the same wages which he earned prior to the accident, is not conclusive on the question of fact of his ability to earn the same wages as he earned prior to the injury.[80]

One of the most beneficent purposes of workmen's compensation legislation is to restore a temporarily or partly disabled workman to the industrial ranks, as soon as possible, and its relation, therefore, to the problem of unemployment is a real one. To this end, the Illinois Act, in common with most of the legislation of this character, is based on the difference in earning power before

[77] Dinnington Main Coal Co. v. Bruins, (1912), 5 B. W. C. C. 367.

[78] *Ante,* §§ 144, 147.

[79] Thomas v. Fairbairne, etc., Co., (1911), 4 B. W. C. C. 195; Calico Prtrs. Assn. v. Higham, (1912), 1 K. B. 93, 5 B. W. C. C. 97; Ball v. Hunt, (1912), A. C. 496, 5 B. W. C. C. 459; Clark v. Gas Light & Coke Co., (1905), 21 T. L. R. 184, 7 W. C. C. 119; Sharman v. Holliday, (1904), 1 K. B. 234, 238.

[80] Bowhill Coal Co. v. Malcolm, (1910), S. C. 447, 47 S. L. R. 449, 3 B. W. C. C. 562, 3 B. W. C. C. 169. See also *ante,* Sec. 150 notes.

and after the accident. Medical and surgical aid are specially directed to restoring working capacity, and when this duty is performed by the employer, the employee on his part is obliged to take such work as he is fitted for or forfeit compensation.

§ 161. Schedule of compensation for specific injuries. A schedule fixing definite specific amounts of compensation to be paid for the loss, or loss of use, of the various members of the body contained in Paragraph (e) of Section 8 is also to be found in the laws of many other states but the Illinois Act differs from some others in providing first for compensation as for temporary disability during the healing period immediately following the injury when the employee is often unable to work because of the temporary effects of his injury.[81] Somewhat similar provisions are found in the New Jersey Act, which provides that compensation for all classes of injuries shall run consecutively and not concurrently for temporary disability, and in addition for each permanent injury,[82] and by the Massachusetts Act, which provides in case of the specified injuries, such as the loss of members of the body, the amount named in the schedule shall be paid in addition to all other compensation.[83]

The Illinois Act, after providing for the payment of compensation for temporary disability during the healing period, fixes certain definite amounts for the loss of a member of the body or the "permanent and complete loss of its use." An injured workman who sustains the loss, or loss of use, of a member of his body covered by this schedule is entitled to the arbitrary amount of compensation fixed for such loss, regardless of whether he is in fact able to return to his work either before the expiration of the period during which compensation is payable, or is not so able to return to work until after the fixed compensation period. It is apparent that the Legislature, by providing a schedule of specific compensation for such permanent partial disabilities, intended

81 Wisconsin Lakes Ice, etc., Co. v. Industrial Commission, 166 N. W. (Wis.) 664.

82 P. L. of N. J., 1911, p. 134.

83 Mass. Stat. 1911, Chap. 751, § 11.

to apply a different rule where such diabilities existed than it applied to temporary total disability. The reason for this would seem to be found in the nature of these injuries. In cases of temporary total disability, the workman's recovery usually leaves him in practically as good condition for labor as before. In cases of partial permanent disability the incapacity must continue during life and doubtless to a greater or less extent disable the employee and may prevent him from earning the full wages which otherwise he would have earned. Obviously with a view of providing some recompense for this hardship, the statute arbitrarily fixes certain definite periods for the payment of compensation for such partial permanent disabilities. Under this provision, therefore, the employee is entitled to the full compensation fixed, even though he should be able to resume employment within a week or even the next day; and is also entitled to retain the full wages which he may be able to earn during the unexpired period. As a matter of common knowledge, a person suffering such disability may reasonably be expected to be able to return to work within the period fixed by the statute for the continuance of the compensation payments.[84]

Where it is claimed, therefore, that the injured workman has suffered "a permanent and complete loss of use" of some member of the body listed in the schedule of specific injuries, the burden is upon the workman to show such permanent and complete loss of use. There is no presumption in favor of one who sustains such a loss and the workmen, in order to recover the arbitrary amount fixed by the statute, must make definite proof of such loss.[85]

It has also been held that compensation for loss of a member cannot be awarded for loss of use of a member in the absence of a provision of the statute for such loss of use; and that, in the absence of such definite provision, compensation for the "equivalent" of the loss of a

[84] Marhoffer v. Marhoffer, 175 App. Div. (N. Y.) 52.

[85] Matter of Kauzer v. Acorn Mfg. Co., 219 N. Y. 326; Matter of Grammici v. Zinn, 219 N. Y. 322.

member is not proper. In such case, the compensation must be awarded on the basis of reduction in wage earning capacity.[86]

For example, there is no presumption in favor of one who loses fingers and claims the loss of the use of his hand by reason thereof, and proof of such loss of the use of the hand must be made.[87]

Proof of loss of use is often a matter of considerable difficulty because in many cases stiffness, adhesions, etc., yield slowly to treatment and what appears to be a permanent and complete loss of use shortly after the injury would ultimately prove to be a case of temporary disability only. Failing to make a prima facie case of such permanent and complete loss of use, upon proper medical testimony or otherwise, compensation for temporary disability only should be allowed covering the period of actual incapacity caused by the injury and the matter continued,[88] the injured workman left to his right of review within eighteen months under the provisions of Section 19 (h), in which proceeding he would be permitted to show that the disability "had increased" from mere temporary to permanent partial disability, which is the purpose and function of this latter provision of the statute.[89]

Compensation for the loss of a member, if made in a plain and unambiguous provision of the statute, and the injury resulting from such loss is unattended by other physical injury, cannot, in any event, exceed the amount specified for the loss of such member.[90]

Where a member of the body is partially destroyed, even though there is no loss, or even loss of use of it, it would seem that the extent of disability would properly be an ultimate fact which the Board or the arbitra-

[86] Sugg v. Erie R. Co., 167 N. Y. S. 390; Supple v. Erie R. Co., 167 N. Y. S. 391; Packer v. Olds Motor Wks., 162 N. W. (Mich.) 80; Adomites v. Royal Furniture Co., 162 N. W. (Mich.) 965.

[87] *Ibid.*

[88] Arcangelo v. Gallo Laguidara, 163 N. Y. Supp. 727, 16 N. C. C. A. 753.

[89] Nelson v. Kentucky River Stone & Sand Co., 206 S. W. (Ky.) 473.

[90] Hull v. United States Fidelity & Guaranty Co., 166 N. W. (Nebr.) 628.

tor might find from all the evidence, although there was no testimony as to the exact proportion of the loss of use. What loss of use there is should be submitted in much the same manner as such evidence is submitted to juries and the ultimate fact fixed from all the evidentiary facts proved and produced.[91] It is error to base a finding of percentage of loss of use upon the opinion of the claimant or his physician.[92]

As to whether compensation in this class of cases should be paid concurrently or consecutively, where there are injuries to several portions of the body as a result of the same accident, depends largely upon the wording of the statute in each case.[93]

Double compensation, however, is not the purpose of Workmen's Compensation Laws and, therefore, concurrent compensation for separate injuries is generally held not permissible unless expressly provided for by the statute.[94] But where the statute provides that the specific compensation shall be in lieu of all other compensation, the provision is intended to mean that such compensation shall exclude all other compensation for that particular specific disability, but should not be construed to deprive the injured workman of compensation for another disability suffered from the same accident.[95] But an award should not be made for specific loss of a member and also for partial permanent disability resulting from the same injury.[96]

If the Board or arbitrator makes a finding of specific impairment and that the injured workman is entitled to

[91] Seckman v. Monarch Cement Co., 165 Pac. (Kas.) 278, 16 N. C. C. A. 356; In re Walsh, 116 N. E. (Mass.) 496, 15 N. C. C. A. 345, 1031.

[92] International Coal & Min. Co. v. Industrial Com., 293 Ill. 524; Peabody Coal Co. v. Industrial Com., 289 Ill. 449.

[93] See State v. District Court of Hennepin County, 162 N. W. (Minn.) 527; Orlando v. Ferguson & Son, 102 Atl. (N. J.) 155; Marhoffer v. Marhoffer, 116 N. E. (N. Y.) 379; In re Denton & Good, 117 N. E. (Ind. App.) 520; O'Brien v. Albert A. Albrecht Co., 172 N. W. (Mich.) 601; Olmstead v. Lamphier, 104 Atl. (Conn.) 488.

[94] O'Brien v. Albert A. Albrecht Co., 172 N. W. (Mich.) 601.

[95] Stefan v. Red Star Mill & Elevator Co., 187 Pac. (Kan.) 861.

[96] Slago Coal Co. v. Industrial Com., 293 Ill. 271.

the compensation provided for such specific impairment, such finding is binding upon the courts and they are not permitted to award compensation on some other basis, if there are facts proven which tend to sustain the finding.[97]

§ 162. Specific injuries—fingers. In the following cases the loss, or loss of use of fingers was considered:

The loss of the tip of the finger, involving only 1/16 of an inch of the bone, is not the loss of the first phalange of the finger.[98]

The loss of ¼ of the first phalange is not the loss of the entire phalange under a provision of the statute that the loss of the first phalange is equivalent to the loss of ½ of the finger.[99]

The loss of ¼ of an inch off from the finger is not the loss of ½ the finger.[1]

The loss of a small chip off the second phalange, which is not a substantial portion of it, is not the loss of the phalange.[2]

A necessary traumatic amputation of ⅛ of an inch of the bone of the finger is not the loss of a phalange and an award for loss of ½ a finger is erroneous, it not appearing that there was permanent loss or impairment of the use of the joint or of the injured phalange.[3]

Where a number of fingers are lost, a number of weeks allowed for each should be added in determining the amount of compensation.[4] But it is held that for the loss of two or more fingers on one hand in the same accident, the amount of compensation should not be arrived at by multiplying the schedule allowance for one finger by the

[97] Underhill v. Central Hospital, etc., 117 N. E. (Ind. App.) 870.

[98] McMooran v. Industrial Commission, 290 Ill. 569.

[99] Tetro v. Superior Printing & Box Co., 172 N. Y. S. 722; Ide v. Faul & Trimmins, 179 App. Div. (N. Y.) 567, 15 N. C. C. A. 730; Geiger v. Gotham Can Co., 163 N. Y. Supp. 678; Thomson v. Sherwood Shoe Co., 164 N. Y. Supp. 869; Mockler v. Hawkes, 158 N. Y. Supp. 759; but see In re Petri, 215 N. Y. 335, 17 N. C. C. A. 1058, distinguished in the Geiger case, *supra*.

[1] Thompson v. Sherwood Shoe Co., 164 N. Y. S. 869.

[2] Barrow v. National Metal Spinning & Stamping Co., 169 N. Y. S. 337.

[3] Geiger v. Gotham Can Co., 163 N. Y. S. 678.

[4] King v. Davidson, 161 N. W. (Mich.) 841.

number of fingers lost, if it exceeds the amount allowed for the loss of the hand.[5] And if fingers are amputated, it is not proper to allow for the loss of a hand unless there is proof of incapacity of the hand.[6]

Where an employee lost only a slight shaving from the bone of the first phalange so that there was no surgical operation or real impairment thereof, and he was able to return to work within two weeks, it was held that compensation should not be awarded as for the loss of the phalange.[7]

Where a certain specific amount of compensation is allowed for the loss of "not more than two phalanges," a fair construction of the language is that the loss of the whole of the distal and middle phalange of the finger or any material fraction thereof, entitles an employee to compensation for two phalanges.[8]

Under the Michigan Act, an award for the loss of a phalange in an amount which exceeds the decreased earning capacity, was held improper.[9] But if the table of specific indemnity does not cover the particular loss which the injured workman has sustained, his compensation should be figured on the basis of loss of earnings and general impairment.[10]

And it has been held in Michigan that where an agreement and release have been executed covering injured fingers on one hand, such agreement and release is not a bar to a claim for compensation for the disability of fingers on the other hand, although such disability results from the same accident.[11]

§ 163. Specific injuries—hand. In the following cases the loss or loss of use of the hand was considered:

Loss of first and second phalanges of the first, second

[5] In re Maranovitsh, 117 N. E. (Ind. App.) 530.

[6] Barringer v. Clark, 172 N. Y. S. 398.

[7] Mockler v. Hawkes, 173 App. Div. (N. Y.) 333.

[8] H. K. Toy and Novelty Co. v. Richards, 117 N. E. (Ind. App.) 260.

[9] Packard v. Olds Motor Co., 162 N. W. (Mich.) 80.

[10] Kenwood Bridge Co. v. Stanley, 117 N. E. (Ind. App.) 657, 16 N. C. C. A. 756.

[11] Green v. Buick Motor Co., 166 N. W. (Mich.) 1028.

and third fingers and the distal phalange of the fourth finger, is not equivalent to the loss of use of the hand.[12]

Where an award is made for injury to several fingers, the award will be set aside and an award made for partial loss of use of a hand, if it is shown that the hand itself is affected.[13] An allowance for the loss of the fingers only is not proper, if it also appears that there is a reduction in the power and usefulness of the hand.[14]

It has been said that the human hand consists of the palm, fingers and thumb, being in combination peculiarly adapted physiologically to the functions of prehension or grasping, which is their primary service, and if this service has been, for all practical purposes, destroyed, it amounts to a loss of the hand.[15]

The fact that by the use of a mechanical appliance or some substitute for the hand, an injured employee is able to perform manual labor to some extent, is not inconsistent with the permanent and complete loss of the use of the hand for practical work.[16]

Unless the Act expressly so provides, the loss of a hand, regardless of its effect upon the capacity of the work, is not total disability.[17]

In New Jersey it is held that loss, or partial loss of use, of both hands should be adjusted on the basis of the proportion of partial loss to total disability provided for loss of use of both hands, and not on the basis of specific indemnity for both hands figured by adding the fractional parts of loss of each member.[18] And in an Illinois case where the workman had received an injury to his hand, all of which was amputated except the thumb and a bent and stiffened index finger, and a stump of the second finger, with which he could pick up small

[12] Matter of Kauzer v. Acorn Mfg. Co., 219 N. Y. 326; Matter of Grammici v. Zinn, 219 N. Y. 322; Adams v. Boorun & Pease, 166 N. Y. S. 97, 15 N. C. C. A. 1022. See, however, Cobb v. Library Bureau, 162 N. Y. S. 291, 14 N. C. C. A. 148.

[13] Updike v. Swanson, 174 N. W. (Nebr.) 862.

[14] State ex rel. Broderick v. District Court of Ramsay County, 174 N. W. (Minn.) 826.

[15] Lavalo v. Michigan Stamping Co., 167 N. W. (Mich.) 904.

[16] Mark Mfg. Co. v. Industrial Commission, 286 Ill. 620.

[17] Carkey v. Island Paper Co., 163 N. Y. S. 710, 16 N. C. C. A. 286.

[18] Orlando v. Ferguson & Son, 102 Atl. (N. J.) 155.

articles to assist himself in dressing, etc., it was held that he was entitled to compensation for the loss of use of the hand. It was held that incapacity for use need not be tantamount to an actual severance of the hand and it was sufficient that the normal use of the hand had been entirely taken away and was of no practical value in manual labor.[19]

§ 164. Specific injuries—arm. In the following cases the loss, or loss of use, of the arm was considered:

Ninety per cent loss of the use of the arm from stiffening, resulting from a fractured elbow, is tantamount to the loss of the arm under the New Jersey Act, and compensation should be proportioned to the loss of function.[20]

Even though some slight use of the arm might remain after the injury if an operation amputating the arm was justified by medical testimony, compensation for the loss of the arm is proper.[21]

§ 165. Specific injuries—foot. In the following cases the loss, or loss of use, of the foot was considered.

Where the statute provides for the loss of a foot and the foot is broken but has not been removed, an award for the loss of the foot is not proper.[22]

Where there is a loss of a member, compensation should be figured according to the schedule for the loss of such member; and if the loss of such member involves the loss of more than one minor member, the compensation should not be increased above that allowed for the loss of the major member by adding together the compensation specified for the minor members, which together comprise the major member. For example, if the workman has had his foot amputated, he should be

[19] Mark Mfg. Co. v. Industrial Commission, 286 Ill. 620; see also In re Meley, 219 Mass. 136; Flocher v. Fidelity & Deposit Co., 221 Mass. 54; Lamieux v. Contractors Mutual Liability Ins. Co., 223 Mass. 346; Rockwell v. Lewis, 154 N. Y. Supp. 893.

[20] Barbour Flax Spinning Co. v. Hagerty Co., 89 Atl. (N. J.) 919, 4 N. C. C. A. 586.

[21] Stockin v. C. R. Wilson Body Co., 171 N. W. (Mich.) 352.

[22] State ex rel. John Wunder Co. v. District Court, 161 N. W. (Minn.) 291, 15 N. C. C. A. 118, 384.

allowed compensation for his foot and not for the loss of all his toes.[23]

Compensation for the loss of a foot should be computed from the date of amputation.[24]

§ 166. Specific injuries—leg. In the following cases the loss, or loss of use, of the leg are considered:

Ankylosis and impaired function of the leg is not tantamount to the loss of the leg under the New Jersey Act, which provides that amputation between the knee and ankle shall be considered as equivalent to the loss of a foot.[25]

Where the testimony is that the amputation of the leg would not have been necessary except for a pre-existing disease, an award cannot be sustained for the loss of the leg so amputated.[26]

Breaking a leg the second time while exercising as directed by the attending surgeon is an accident within the meaning of the compensation law, where the original fracture was caused by an accident arising out of, and in the course of, the employment.[27]

Where an employee who previous to his employment has lost an arm, loses a leg as the result of an injury arising out of and in the course of the employment, he is entitled to compensation as for complete and permanent disability.[28]

§ 167. Specific injuries—eye. In the following cases the loss, or loss of use, of the eye was considered:

If a person has normal use of an eye and the sight is lost as the result of an accident, he would be entitled to

[23] In re Cannon, 117 N. E. (Ind. App.) 658.

[24] Addison v. W. D. Wood Co., 174 N. W. (Mich.) 149.

[25] Rakiec v. D. L. & W. R. Co., 88 Atl. (N. J.) 953, 4 N. C. C. A. 734.

[26] Brady v. Hollbrook, Cabbett & Robbins Corp., 178 N. Y. S. 504.

[27] Hammond v. Industrial Commission, 288 Ill. 262; Bailey v. Industrial Commission, 286 Ill. 623; Shell Co. of California v. Industrial Acc. Com., 172 Pac. (Cal.) 611, 16 N. C. C. A. 552, 17 *Id.* 256, 257; Adams v. W. E. Wood Co., 169 N. W. (Mich.) 879; Craner v. West Bay City Sugar Co., 167 N. W. (Mich.) 843.

[28] Wabash R. R. Co. v. Industrial Com., 286 Ill. 194; and see cases cited, *post*, § 168, note 37.

compensation for the loss of the eye; but, on the other hand, if he had a pre-existing disease which was progressive and from which blindness was certain to ensue, and the accident caused only a partial loss of vision, he would be entitled to compensation for only such portion of loss of sight as was directly caused by the accident.[29] And even though an accident happens to the eye, if the defective vision results from a pre-existing disease compensation should not be awarded.[30]

Compensation fixed for loss of an eye does not depend upon loss of time, but is for a definite and arbitrary period fixed by the statute.[31]

Loss of 80 per cent of vision has been held not equal to the loss of the use of the eye.[32]

But where the usefulness of the eye is lost for all practical purposes, it is generally held to be a loss of the use of the eye within the meaning of the statute.[33]

If a compensation law provides a certain amount of compensation for the loss of an eye, this amount will not be reduced because of the fact that prior to the accident the employee had only a percentage of vision in that eye because the wages received must be considered as the wage earning capacity with the defective vision of the employee prior to the accident.[34]

It has also been held that where an employee is blind in one eye, the loss of the other amounted to total disability, because of the fact that he was as totally incapacitated for work by the loss of that one eye as he would have been by the loss of two.[35]

An eye which is nearly normal for many purposes

[29] Spring Valley Coal Co. v. Industrial Commission, 289 Ill. 315.

[30] Perry Co. Coal Co. v. Industrial Com., 294 Ill. — (June, 1920).

[31] Joliet Motor Co. v. Industrial Board, 280 Ill. 148, 15 N. C. C. A. 75, 1071.

[32] Boscarino v. Carfagno & Dragonette, 115 N. E. (N. Y.) 710, 14 N. C. C. A. 145.

[33] Juergens v. Industrial Commission, 290 Ill. 420; Titchener v. Industrial Board, 202 Ill. App. 296. See also In re O'Brien, 117 N. E. (Mass.) 1, 15 N. C. C. A. 236.

[34] Hovertis v. Columbia Shirt Co., 173 N. Y. S. 606; Pawling & Garnischfeger Co. v. Milvenberger, 174 N. W. (Wis.) 455.

[35] Brooks v. Peerless Oil Co., Inc., 83 So. (La.) 663.

with the use of glasses will not sustain an award for loss of use of the eye.[36]

Where the statute provides only "for the entire and irrevocable loss of sight of either eye," the words must be taken in their ordinary sense, and compensation may not be granted for injuries which result in less than the entire and irrevocable loss of sight of the eye.[37]

If the eyes are injured so that loss of vision results, an award for such loss is proper, though the eyes were previously defective.[38]

Under the Michigan statute, where an employee meets with an injury which requires the removal of an eye which, for all practical purposes, was blind at the time of the accident, he is still entitled to full compensation for the loss of an eye.[39]

Where an employee receives an injury to one eye which destroys the retina and as a result he suffers lack of co-ordination between the injured eye and the other eye, it is held that he has not lost the use of the eye, because, in case of loss of the other eye, he would by the use of artificial lenses be able to use his injured eye and perform his usual duties.[40] But, on the other hand, it has been held that loss of accommodation so that the injured eye cannot be used except by closing the other eye amounts to loss of use of the eye.[41]

Mere ability to distinguish objects in bulk and not in outline cannot properly be called vision.[42]

And in Minnesota it has been held that an eye is not a "member of the body."[43]

Where the result of an injury to the eye is uncertain at the time of the hearing of the compensation claim,

36 Valentine v. Sherwood Metal Working Co., 178 N. Y. S. 494.

37 Keyworth v. Atlantic Mills, 108 Atl. (R. I.) 81.

38 Blaes v. E. W. Bliss Co., 163 N. Y. S. 722, 14 N. C. C. A. 94.

39 Purchase v. G. R. Refrigerating Co., 160 N. W. (Mich.) 391, 16 N. C. C. A. 353.

40 Frings v. Pierce Arrow Motor Car Co., 169 N. Y. S. 309.

41 Smith v. F. & B. Construction Co., 172 N. Y. S. 581; Stefan v. Red Star Mill & Elevator Co., 187 Pac. (Kas.) 861.

42 Industrial Commission of Colorado v. Johnson, 172 Pac. (Colo.) 422, 16 N. C. C. A. 350.

43 State ex rel. Zinken v. District Court, 173 N. W. 857.

the hearing should be continued until the final result can be determined.[44]

The Minnesota law limits the liability of an employer for accidental injury to an employee, where such employee had, before entering the service, suffered an injury which resulted in permanent partial disability, to the compensation provided for for permanent partial disability, although the two injuries together result in permanent total disability. This rule was applied where an employee having lost the sight of one eye prior to entering an employer's service, became totally blind by an accident in the course of his employment resulting in the loss of sight of his other eye.[45]

In a Michigan case it was said: "The compensation fixed in Section 9 must be based upon the fact that the total incapacity for work resulted from the injury. Section 10 deals with the partial incapacity for work resulting from the injury, and fixes the compensation, and then proceeds: 'For the loss of an eye fifty percentum,' etc. 'The loss * * * of both eyes * * * shall constitute total and permanent disability.' In the instant case the loss of the first eye was a partial disability for which, if our workmen's compensation law had been in existence, the then employer would have been liable, and for which disability the present employer was in no degree the cause. The loss of the second eye standing by itself was also a partial disability, and of itself did not occasion the total disability. * * * We think it clear the total incapacity cannot be entirely attributed to the last accident."[46]

§ 168. Complete and permanent incapacity. Paragraph (f) of Section 8 of the Illinois Act provides for compensation for "complete disability which renders the employee wholly and permanently incapable of work." Compensation for complete and permanent dis-

[44] Arcangelo v. Gallo & Laguidara, 163 N. Y. S. 727, 16 N. C. C. A. 753.

[45] State ex rel. Garwin v. District Court Cass Co., 129 Minn. 156, 11 N. C. C. A. 433, 8 N. C. C. A. 1052.

[46] Weaver v. Maxwell Motor Co., 186 Mich. 588, 8 N. C. C. A. 1055n, 11 N. C. C. A. 433.

ability begins on the day after the injury and shall be four times the average annual earnings of the employee, after payment of which, in installments, as provided by the Act, there shall be paid a pension during life annually equal to 8% of the amount payable as a death benefit under Paragraph (a) of Section 7, such pension not to be less than $10.00 per month.

In order to entitle the injured workman to compensation as for complete and permanent disability, he must prove that he is suffering from a disability which renders him "wholly and permanently incapable of work" of any character. The requirements under this paragraph relating to complete and permanent disability differ from the requirements with reference to partial incapacity as set forth in Paragraph (d) of Section 8, under which the injured employee is only required to prove that as a result of his injury he becomes partially incapacitated "from pursuing his usual and customary line of employment."

A finding by the Industrial Commission that the injured man "is *now* totally disabled" is not sufficient to sustain an award for compensation for total disability, even though the finding of the Board also provides that compensation shall be paid as long as the injured man shall live.[47]

Where an employee, who, previous to his employment, has lost an arm, loses a leg as the result of an injury arising out of and in the course of his employment, he is entitled to compensation as for complete and permanent disability.[48]

If pain, brought about by injury, causes inability to work, the pain is within the provisions of the Workmen's Compensation Act just the same as though some part of the body had been otherwise impaired to such an extent as to render the person unable to perform

[47] Illinois Midland Coal Co. v. Industrial Board, 277 Ill. 333, 16 N. C. C. A. 810.

[48] Wabash R. R. Co. v. Industrial Commission, 286 Ill. 194; In re Branconnier, 223 Mass. 273, 16 N. C. C. A. 350; Schwab v. Emporium Forestry Co., 216 N. Y. 712, 16 N. C. C. A. 352; but see Weaver v. Maxwell Motor Co., 186 Mich. 588, 11 N. C. C. A. 433.

labor. Compensation for loss of wages or of inability to earn wages, although that loss may be caused by pain, is not the same as damages for pain itself. The former comes within the Compensation Act and the latter does not.[49]

If no claim is made before the arbitrator or the Board that the evidence furnishes no data for the allowance of compensation for permanent and complete disability, the question cannot be raised in the courts.[50]

It has also been held that where the workman sustains severe injuries, including several fractured bones, which in fact are permanent disabilities, he may recover for such disabilities, even though he may be able to resume his work, with no reduction in wages.[51] In a similar case it was said: "It may well be that for a time an injured employee might be able to earn the same wages as before the accident, but, as we read the Act, the disability intended thereby is a disability due to loss of a member, or part of a member, or of a function, rather than to mere loss of earning power. Even if this were not so, it does not follow that the injured employee had not sustained a distinct loss of earning power in the near or not remote future and for which the award is intended to compensate."[52]

And in a Kansas case where it was shown that the injured man was "making" a certain sum weekly, by "conducting" a certain business, as owner, it was held that a finding of total disability could not be said to be inequitable or against conscience "because he has the thrift and intelligence to provide for his support by investing such means as he has in a business carried on by the labor of others under his direction."[53]

§ 169. Combined death and disability benefits. Paragraph (g) of Section 8, provides that if death occurs

[49] Trowbridge v. Wilson & Co., 107 Pac. (Kas.) 816.

[50] Wells Bros. v. Industrial Commission, 285 Ill. 647.

[51] Burbage v. Lee, 87 N. J. L. 36, 11 N. C. C. A. 428.

[52] Zeng Standard Co. v. Pressey, 86 N. J. L. 469, 11 N. C. C. A. 428. For note on differences between temporary and permanent disability, see 11 N. C. C. A. 426.

[53] Moore v. Peet Bros. Mfg. Co., 99 Kan. 443, 14 N. C. C. A. 353.

before the total disability payments paid exceed the maximum amounts fixed in the Act, and dependents are left, as defined in Section 7, the difference between the sums so paid, and the compensation fixed for death, shall be paid to such dependents, but not less in any event than $500. This provision recognizes two distinct and separate rights: viz., those of the employee for disability payments while living, and those of his dependents, upon death caused by the injury causing the disability. We have elsewhere observed [54] that the employee has no control over the death benefits which may accrue to the dependents in case of his death, and that their rights to such compensation are not to be affected by any agreement, award, payments or redemption of disability compensation, present or prospective.

It would seem that under this subdivision cases might arise in which the total expense to the employer for compensation might exceed the maximum fixed in the Act. Disability payments might be made to the employee for a sufficiently long period, to make the aggregate of such payments, when added to the minimum of $500 fixed by Subdivision (g), exceed the sum of $3500 or $4000, but in such case, the maximum should not be permitted to operate to reduce the $500 minimum for death fixed in Subdivision (g), because they are two distinct claims, one for disability and the other for death, and the maximum in each case would not be in excess of the maximum fixed by the Act, while the combined amounts paid for both claims, of disability and death, might be.

§ 170. Factors in earning ability. It has been well stated, that ability to earn wages is mainly dependent upon the following factors:

(1) Unimpaired functional power of bodily organs.

(2) Technical knowledge and skill required to carry on the vocation.

(3) The ability of the individual to compete in the labor market.[55]

[54] *Ante*, § 146.

[55] Magnus & Wurdeman, Visual Economics, p. 26.

Whether incapacity has resulted from any accident, by reason of the disturbance of any of these three factors, is entirely a question of fact, except, of course, in those cases of partial permanent incapacity included in the schedule of specific injuries, in which cases incapacity is conclusively presumed.[56]

The question of whether the functional power of the bodily organs has been impaired would not ordinarily be one of any very great difficulty. Impairment of technical knowledge or skill might arise either from physical or mental injury. The workman's knowledge or skill in the particular work in which he is engaged is therefore a proper and necessary field of inquiry, in order to determine what loss of either will result to him, by reason of his injuries. The ability of the workman to compete in the labor market is a factor of importance, which ought to be carefully considered, in addition to the actual physical disability which may result from the injury sustained. Many injuries are of such a character as to place a man at a decided disadvantage, when applying for work, in competition with other workmen. Loss of limbs, or eyes, disfigurements, etc., while they often do not actually incapacitate the workman in the particular line of employment in which he is engaged, and would not actually reduce his earnings, so long as he remains with the same employer, they nevertheless almost invariably reduce the ability of the workman to compete for work in the open labor market, because of the well-known prejudice of employers against those who are crippled, or who exhibit physical evidences of prior serious injuries.[57]

[56] Leeds & Liverpool Canal Co. v. Hesketh, (1910), 3 B. W. C. C. 303; Furness v. Bennett, (1910), 3 B. W. C. C. 195; Rayman v. Fields, (1910), 102 L. T. 154, 3 B. W. C. C. 123; Smith v. Colliery Co., (1900), 2 W. C. C. 121; Dowds v. Bennie, (1903), 5 F. 268; Price v. B. B. & Co., (1907), 2 B. W. C. C. 337; Wells v. Cardif Steam Coal Collieries Co., (1909), 3 B. W. C. C. 104; Roberts v. Benham, (1910), 3 B. W. C. C. 430; Anderson v. Darngavil, (1910), S. C. 456; Cunningham v. M'Naughten & Sinclair, (1910), S. C. 980, 3 B. W. C. C. 577; O'Neil v. Ropner & Co., (1908), 43 Ir. L. T. 2, 2 B. W. C. C. 334.

[57] Christ v. Pacific Tel. & Tlg. Co., Rep. Cs. Calif. Industr. Acc. Bd., No. 2, April 25, 1912; Calico Ptrs. Assn. v. Higham, (1912), 1 K. B.

In discussing the ability of the workman to compete in the labor market, an English court has said: "He gave evidence to the effect that he was always asked why he had left his last place, and that at the word 'accident' they always replied that they were 'full up.' That was merely a civil way of telling the man that they were not going to take on a man who had had compensation for an accident. * * * I think that a workman so fettered cannot be said to have lost his partial incapacity because he can, at irregular times, until 'struck' actually do his work, and that he is entitled to rank with those whose compensation is only to be reduced in the event of their being able not only to do, *but to get and earn wages*, by some suitable employment."[58]

§ 171. Inability to get work. A workman lost his eye by accident, and upon recovery he applied for arbitration. The county court judge found that he was capable of doing his old work as a boiler maker, and made him an award. He then returned to work with the same employers and at the same rate of wages. After he had been working for some time he was discharged, on the ground of misconduct, it being alleged that he was asleep at work. The man tried to get similar employment elsewhere but failed. On an application for review, the judge increased the payments, finding that the workman had not been guilty of misconduct, and that even when working for his old employers, he could not do his work properly. He also found that the man was, by the loss of his eye, unable to obtain work as a boiler maker elsewhere, and therefore was put in the position of a casual worker. The finding was sustained by the Court of Appeals.[59]

The right to compensation for disfigurement, because of its effect upon the ability of the workman to compete in the labor market, is well illustrated in a leading Eng-

93, 5 B. W. C. C. 97, 110; Ball v. Hunt, 5 B. W. C. C. 459, (1912), A. C. 496.

[58] Thomas v. Fairbairn, (1911), 4 B. W. C. C. 195.

[59] Brown v. Thornycroft, (1912), 5 B. W. C. C. 386; see also Stoica v. Swift & Co., 160 N. W. (Nebr.) 964.

lish case.[60] As a result of an accident years ago, a workman was blind in one eye, but was to all appearances, two-eyed, and his employer did not know of his infirmity. He was fully capable of work. As a result of a new accident, the blind eye had to be removed, and he could no longer conceal his infirmity. On recovering from the effects of the operation he was quite unable, owing to his now patent infirmity, to obtain work either from his old employers or from any one else. Claiming that the accident had thus in effect incapacitated him for work, he brought proceedings for compensation, and the county court judge held that the incapacity was due to the accident which blinded his eye years ago, and made an award in favor of the employers, which was sustained by the Court of Appeal. In reversing this finding, and allowing the appeal of the workman, the House of Lords held that incapacity for work includes inability *to get work,* and that although after the second accident the workman was physically as well able to do his old work as before, the disfigurement caused by the accident, preventing him from obtaining such work, was incapacity for work, within the meaning of the Act.[61] In another case a workman, partially incapacitated by accident, was given light work by his employers, and under an agreement received certain compensation. Eighteen months afterwards, the employers dismissed him as they were cutting down the number of their employees. The man was unable, on account of his partial incapacity, to find work in the district, and applied for a review on that ground. It was held by the Sheriff-Substitute, that this was no ground for review, and this decision was sustained by the Court of Session. The House of Lords, however, held, following its previous decision, that incapacity for work, included inability to obtain employment in the district where the workman lived, and the occurrence of this inability to obtain work, was a relev-

[60] Ball v. Hunt, (1912), A. C. 496, 5 B. W. C. C. 459.

[61] McDonald v. Wilson & Clyde Coal Co., (1912), A. C. 513, 5 B. W. C. C. 478.

ant change of circumstances entitling the workman to a review.[62]

§ 172. The incapacity must of course result from the accidental injury sustained by the employee, and not from some other intervening cause. As we have already seen, with reference to death cases, it is not necessary to show that the incapacity was the natural or probable consequence of the injury.[63] If the chain of causation is not broken by any *novus actus interveniens*, the incapacity will be held to have in fact resulted from the injury whether it is the natural or probable result, or not.

A workman, while employed in his employer's mine, was injured by a stone falling on his knee. The accident occurred on a cold day, and the workman took over two hours to get to his home, a distance of a mile and a quarter. Chest trouble and pneumonia supervened, and in an application for compensation, medical evidence was given that the applicant suffered from bronchitis and chronic asthma and was unable to work. The Court of Appeal held in referring the case back to the county court judge that the test to be applied was not whether the workman's diseased condition was a natural or probable result of the accident, but whether it was the result of the accident in the sense that it was occasioned by the debilitated state of the workman immediately after the accident and originated by accident, or whether the accident has not accelerated an existing tendency to disease, or given life to certain latent causes of mischief in the workman's body.[64]

§ 173. Previous condition of disease or injury, in the workman will not deprive him of the right to compensation if it appears that the incapacity actually results from the injury received. So long as the injury sustained is the proximate cause of the incapacity, the previous physical condition of the employee is unimport-

[62] Cardiff Corporation v. Hall, (1911), 1 K. B. 1009, 4 B. W. C. C. 159; Guest, Keen & Nettlefolds v. Winsper, (1911), 4 B. W. C. C. 289.

[63] Dunham v. Clare, (1902), 2 K. B. 292, 4 W. C. C. 102.

[64] Ystradowen v. Griffiths, (1909), 2 K. B. 533, 2 B. W. C. C. 357; see also *post*, § 173, and *ante*, §§ 65, 143, 144.

ant, and he may recover for permanent incapacity, although a previous existing disease prevents a complete recovery from the effects of the accident.[65]

Where a workman dies from a pre-existing disease, which is aggravated or accelerated under circumstances which may be said to be accidental, his dependents would be entitled to compensation.[66]

Compensation may be awarded, although the employee may have been afflicted with a pre-existing disease, provided the disease was aggravated and accelerated by an accidental injury received in the course of employment; but to bring the case within the rule, there must have been an accidental injury as an immediate or proximate cause.[67] But a mere showing of heavy work in one who has heart trouble is not a showing of accidental injury.[68]

Where the personal injury is not the sole cause, but exercises a contributory effect upon some existing malady or disease, arousing the latter from a latent state or aggravating it, thus producing disability or death at an earlier date than otherwise would have resulted, the employee will be entitled to compensation.[69]

The fact that a person is already afflicted with a dormant disease that may some day produce physical disability is no reason why he should not be allowed compensation for an injury which causes the disease to become active or virulent and superinduces physical disability.[70]

Where a workman, long in the service of his employer, sustained a cerebral hemorrhage while piling barrels on a wagon, resulting in motor paralysis and consequent deterioration of the mental faculties, he is entitled to

[65] Big Muddy Coal & Iron Co. v. Industrial Board, 279 Ill. 235.

[66] Peoria Terminal Co. v. Industrial Board, 279 Ill. 352, 15 N. C. C. A. 632.

[67] Jakub v. Industrial Commission, 288 Ill. 87.

[68] *Ibid.*

[69] In re Bowers et al., 116 N. E. (Ind. App.) 842; Indianapolis Abbatoir Co. v. Coleman, 117 N. E. (Ind. App.) 502; VanKuren v. Dwight Devine & Sons, 165 N. Y. S. 1049, 15 N. C. C. A. 644.

[70] Behan v. John B. Honor Co., 78 So. (La.) 589.

recover compensation, although he was suffering from a pre-existing arterio-sclerosis.[71]

Where it was shown that the deceased, when partially recovered from a fracture of the leg, was seized with and died suddenly as a result of an attack of what was described by the defendant's physicians as cerebral embolism, resulting from a long standing case of arterio-sclerosis, and by the plaintiff's physicians as pulmonary embolism caused by a clot of blood from the injured leg, it was held that a finding for the plaintiff should not be disturbed.[72]

And it has been held that, where the death of an employee suffering from pre-existing heart disease was caused by exertion and excitement due to a fire, compensation was properly awarded.[73]

If a man has normal use of his eyes and the sight of one is lost as the result of accident, it is held that he would be entitled to compensation as for the loss of his eye; but if, on the other hand, he had a pre-existing disease which was progressive and from which blindness was certain to result, he would be entitled to compensation for only such part of his condition as was directly caused by the accident.[74] But if the Board or arbitrator holds that the accident resulted from disease rather than from accident, and there is evidence to support the finding, it is conclusive upon the court.[75]

The following English cases further illustrate the principle:

For example, it was held that where a claimant had gout, prior to the injury, which seemed to be aggravated by the accident, he was nevertheless entitled to compensation, if the actual incapacity was the result of

71 Fowler v. Risedorph Bottling Co., 175 App. Div. (N. Y.) 224, 14 N. C. C. A. 141, 533.

72 Klage v. Bunsen Coal Co., 201 Ill. App. 58.

73 Soroetke v. Jackson-Church Co., 160 N. W. (Mich.) 383, 15 N. C. C. A. 636. But see Stombaugh v. Peerless Wire F. Co., 164 N. W. (Mich.) 537, 15 N. C. C. A. 635.

74 Spring Valley Coal Co. v. Industrial Commission, 289 Ill. 315.

75 State ex rel. v. District Court, 172 N. W. (Minn.) 311. See also cases cited under "Proximate Cause," *ante*, § 65, and also §§ 26 *et seq.*

the injury. Also, the workman was held entitled to compensation, where he had been suffering from a progressive disease of the eye, and being injured in the other eye, the combination of the two conditions prevented him from doing the same amount of work as before the accident.[76]

A miner in 1906 had his right hand permanently injured. He received full compensation, and was then given light work, at which he earned more than his old wages. In 1910 he stopped work, as his heart was affected by disease, which prevented him continuing this light work. The county court judge held that the man was unfit for work, but that the heart disease was unconnected with the injury to the hand. The Court of Appeal held that as the workman was still suffering from obvious permanent injury to the hand, due to the accident, he was entitled to compensation, the amount of which was a question for the county court judge.[77]

A workman suffered a wrench of the knee. He recovered sufficiently to enable him to resume work, although he was still suffering some pain at intervals. At the end of three years, he suffered a strain to the same knee which incapacitated him, and it was held that he was entitled to compensation for the latter injury, and that to avoid liability the employers were obliged to show that no new injury had been caused.[78]

The latter case is in accord with the general rule that if injury causing incapacity arises from a second accident, to which the first accident was a contributory cause, compensation will be allowed for the second accident only.[79]

§ 174. Nervous effects—incapacity resulting from the injury. If the incapacity results from the nervous effects produced by the accidental injury, the workman is en-

[76] Lloyd v. Sugg, (1900), 1 Q. B. 486, 2 W. C. C. 5; Lee v. Baird & Co., (1908), S. C. 905, 1 B. W. C. C. 34.

[77] Cory Brothers v. Hughes, (1911), 2 K. B. 738, 4 B. W. C. C. 291.

[78] Borland v. Watson, (1911), 49 S. L. R. 10.

[79] Noden v. Galloways, (1912), 1 K. B. 46, 28 T. L. R. 5.

titled to compensation.[80] It has been held, however, that where the nervous condition was really caused by brooding over the effects of the accident, that that would not be incapacity, within the meaning of the Act.[81]

It has been held, however, that nervous shock, alone, is personal injury, entitling a workman incapacitated thereby, to compensation, as where it was caused by witnessing the results of an accident to another workman.[82]

§ 175. Clumsiness at work—incapacity resulting from the injury. A waitress had an injury to her finger, which becoming stiff, prevented her from working as efficiently as before. She received compensation for sometime, and then returned to her old work at her old wages. She could not work as well as before and her employers complained of her clumsiness. She left this work of her own accord, and, without any attempt to find other work, claimed compensation. Compensation was awarded for partial incapacity.[83]

§ 176. Truss necessary for work—incapacity resulting from injury. A seaman was injured and claimed compensation. The medical evidence being conflicting, the county court judge referred the matter to a medical referee for a report. He certified that the man was fit for light work if he wore a truss, but not fit for work as a seaman, or for lifting, and an award for total incapacity was sustained.[84]

§ 177. Reasonable refusal to resume work—incapacity. A workman had the tip of his little finger amputated, following an accident. The wound healed, leaving slight adhesions. After paying compensation for sometime, the employers applied for a review. The em-

[80] Holt v. Yates, (1909), 3 B. W. C. C. 75; Eaves v. Blaenclydach Colliery Co., (1909), 2 K. B. 73, 2 B. W. C. C. 329; Turner v. Brooks, (1909), 3 B. W. C. C. 22.

[81] Holt v. Yates, (1909), 3 B. W. C. C. 75. See also, Beech v. Bradford Corp., (1911), 4 B. W. C. C. 236.

[82] Yates v. South Kirkby, etc., Co., (1910), 2 K. B. 538, 3 B. W. C. C. 418.

[83] Ward v. Miles, (1911), 4 B. W. C. C. 182.

[84] Henricksen v. S. S. Swanhilda, (1911), 4 B. W. C. C. 233; Evans v. Cory Bros. & Co., (1912), 5 B. W. C. C. 272.

ployers contended that the man would have been fit for work, and that the persistence of the adhesions was due to his own unreasonable refusal to resume work, which would have soon broken down the adhesions. The county court upheld this contention, but upon review by the Court of Appeal, it was held there was no evidence to support such contentions.[85]

But if the incapacity results from softening of the muscles due to loafing, it seems the compensation may properly be stopped.[86]

§ 178. Refusal of medical or surgical advice, or treatment—incapacity.[86a] Incapacity, which may result in whole or in part, from *bona fide* attempts, by medical or surgical treatment, to reduce the consequences of the injury, will be such incapacity as will entitle the workman to compensation. It is altogether a question of what is reasonable and what is not.

For example, a workman's forearm was broken by accident. He had it set, and the surgeon did the work so negligently that there was a vicious union, the bones being united, but overlapping and at a bad angle, preventing use of the wrist. The man being for this reason still incapacitated and receiving compensation, the employers applied for a review on the ground that the incapacity was no longer due to the injury, but either to the workman's unreasonable refusal of operation, or to the negligence of the surgeon. It was held that the refusal of the workman was reasonable, at least *prima facie*, but that the question as to the negligence of the surgeon should be enquired into, and a rehearing was ordered for that purpose.[87]

It has been held that the workman is not unreasonable in refusing to undergo an operation when such refusal is based upon the advice of his own physician, who has expressed an opinion that such an operation might involve some risk to life;[88] or where another reliable phy-

[85] Burgess & Co. v. Jewell, (1911), 4 B. W. C. C. 145.

[86] David v. Windsor Steam Coal Co., (1911), 4 B. W. C. C. 177.

[86a] See Sec. 219, *post*.

[87] Humber Towing Co. v. Barclay, (1911), 5 B. W. C. C. 142.

[88] Tutton v. Owners S. S. Majes-

sician, who appears to be impartial, has advised against such an operation;[89] or where the workman's own physician has advised that the operation would probably be useless;[90] and also, where upon all the evidence, it was impossible to say that the proposed operation would have prevented amputation of the finger.[91]

§ 179. Imprisonment—not incapacity. Under the English Act it has been held by the county court judge, that compensation should be suspended during the time that the workman is serving a term of imprisonment, on the ground that the incapacity was no longer due to the injury received.[92]

§ 180. Disregarding medical advice—not incapacity. Failure to exercise, and remaining for an unreasonable time in unnecessary idleness, so that the condition of the body becomes weakened, has been held misconduct of such a character as to deprive the workman of his right to compensation;[93] and in a similar case, compensation was denied, where a woman employee unreasonably refused to exercise an injured hand, where it was shown that the working of it would probably have relieved the consequences of the injury.[94] Also where a workman suffered from adhesions in an injured arm, and his employers asked him to undergo an operation for the breaking down of the adhesions, which he refused. The employers applied to have the compensation terminated on the ground that the employee was no longer incapacitated by reason of the accident, and the court so held.[95] Refusal to submit to an operation, when all the medical witnesses advise it, and which does not involve appreciable risk, and which an ordinary individual would sub-

tic, (1909), 2 K. B. 54, 2 B. W. C. C. 346; Warncken v. Moreland, (1909), 1 K. B. 184, 2 B. W. C. C. 350.

89 Sweeney v. Pumpherston Oil Co., (1903), 5 F. 972.

90 Moss & Co. v. Akers, (1911), 4 B. W. C. C. 294.

91 Marshall v. Navigation Co., (1910), 1 K. B. 79, 3 B. W. C. C. 15.

92 Clayton v. Dobbs, (1908), 2 B. W. C. C. 488.

93 Upper Forest, etc., Tin Plate Co. v. Grey, (1910), 3 B. W. C. C. 424; David v. Windsor S. C. Co., (1911), 4 B. W. C. C. 177.

94 Steele v. Bilham, (1910), 128 L. T. Newsp. 416. See also, Moss v. Akers, (1911), 4 B. W. C. C. 294.

95 Wheeler v. Dawson, (1912), 5 B. W. C. C. 645.

mit to in his own interests, is unreasonable conduct, justifying discontinuance of compensation.[96]

§ 181. Slight disability—not incapacity. An injured workman, receiving compensation, had his payments stopped by his employers, on the ground that incapacity had ceased. A physician to whom the parties had referred the question of the workman's recovery reported that he was quite fit for his former duties or any ordinary work. In an application for review by the employers, the arbitrator found in fact that the workman was fit to resume his former work, or to undertake any other form of labor conducted on the level of the ground; that in the meantime it would not be safe for him to climb ladders or steps, (as his duties occasionally involved his doing) since, from want of use, combined with the effects of the accident, his left leg which had been lacerated, was weaker than the right; that the best treatment for the left leg was the immediate resumption of such work as the workman was capable of. On these findings, compensation was ended.[97]

§ 182. Pensions. The European laws generally provide for a pension, so long as the disability lasts. A number of the American laws now provide for compensation, during the entire disability period, terminating only at death. The Illinois Act, by Paragraph (f) of the section under consideration provides for a pension for life in cases of complete and permanent disability, amounting to "eight per cent of the amount which would have been payable as a death benefit under Paragraph (a), Section 7," etc., which pension "shall not be less than $10.00 per month, and shall be payable monthly."

§ 183. Migratory workmen. We have elsewhere discussed the extra-territorial effect of the Illinois Compensation Act.[98]

[96] Warncken v. R. Moreland & Son, (1909), 1 K. B. 184, 2 B. W. C. C. 350; Donnelly v. Baird & Son, (1908), S. C. 536, 45 S. L. R. 394, 1 B. W. C. C. 95; Paddington v. Stack, (1909), 2 B. W. C. C. 402.

[97] McNamara v. Burtt, (1911), 4 B. W. C. C. 151. See also, Mulholland v. White Haven Colliery Co., (1910), 2 K. B. 278, 3 B. W. C. C. 319.

[98] *Ante*, § 124.

As "the citizens of each state are entitled to the privileges and immunities of citizens of the several states," it follows that a workman who shall come temporarily into a state having a compulsory compensation law, is entitled to its benefits if he be within its classification, though his own state, having no such law, offers no reciprocal advantage. Where the law is elective in form, however, as here, depending upon the acceptance in this State, either expressly or impliedly, by both employer and employee, it is difficult to see how a case might arise in which a foreign workman temporarily within the confines of this State, might avail himself of the benefits of the Act, unless he establishes a definite employment relation here, such as the law contemplates.

It is probable that the Illinois courts would take jurisdiction of a compensation claim arising under a statute of a foreign state, and enforce the provisions of the statute of such state, as a matter of comity, if the defendant could be found within the court's territorial jurisdiction.[99]

§ 184. Incompetent claimants. Section 5 of the Illinois Act, defining employees, provides *inter alia*, "minors who are legally permitted to work, under the laws of the State, who for the purpose of this Act, shall be considered the same, and have the same power to contract, receive payments and give quittances therefor, as adult employees." Paragraph (h) of Section 8, now being considered, provides: "In case an injured employee shall be incompetent at the time when any right or privilege accrues to him under the provisions of this Act a conservator or guardian may be appointed, pursuant to law, and may, on behalf of such incompetent, claim and exercise any such right or privilege with the same force and effect as if the employee himself had been competent," etc., and that "no limitations of time by this Act provided shall run so long as said incompetent employee is without a conservator or guardian." It has been

[99] C. & E. I. R. R. Co. v. Rouse, 178 Ill. 132, 135, 7 Ill. Notes, 905, § 46.

held that the legislature has the power to bind minors by the provisions of a compensation act, in the same manner as adults,[1] and so far as minors are concerned, it would seem that the express power and authority given them by the provisions of Section 5, would authorize them to accept, receive and give binding receipts for compensation, in the same manner as adult employees. A guardian "may" be appointed, however, to exercise the rights of the injured minor employee with reference to making claim for compensation, collecting and adjusting the same, and any limitations of time provided by the Act shall not run as to such minor until such guardian is appointed, if minors are to be included within the term "incompetent" as used in Section 8. Persons other than minors, however, who are incompetent under the law, can only act through a regularly appointed guardian or conservator, and any claim on behalf of such incompetent, must be made and prosecuted by such guardian or conservator, because there is nothing in the Act removing the disabilities of such incompetent persons, as there is in Section 5 as to minors, and the provision of Section 8, therefore, to the effect that a conservator or guardian "may" be appointed, and "may" claim and exercise such rights, should be construed as "shall" as to all incompetent persons other than minors.

[1] C. R. I. & P. Ry. Co. v. Fuller, 186 Pac. (Kan.) 127; Scott v. Nashville Bridge Co., — Tenn. — (June, 1920).

CHAPTER IX

LUMP SUM SETTLEMENTS

Sec. 9 of the Illinois Act

§ 9. Any employer or employee or beneficiary who shall desire to have such compensation, or any unpaid part thereof, paid in a lump sum, may petition the Industrial Board, asking that such compensation be so paid, and if, upon proper notice to the interested parties and a proper showing made before such board, it appears to the interest of the parties that such compensation be so paid, the board may order the commutation of the compensation to an equivalent lump sum, which commutation shall be an amount which will equal the total sum of the probable future payments capitalized at their present value upon the basis of interest calculated at three percentum per annum with annual rests: *Provided,* that in cases indicating complete disability no petition for a commutation to a lump sum basis shall be entertained by the Industrial Board until after the expiration of six months from the date of the injury, and where necessary, upon proper application being made, a guardian, conservator or administrator, as the case may be, may be appointed for any person under disability who may be entitled to any such compensation, and an employer bound by the terms of this Act, and liable to pay such compensation, may petition for the appointment of the public administrator, or a con-

Sec. 9 of the Illinois Act

servator, or guardian, where no legal representative has been appointed or is acting for such party or parties so under disability. Either party may reject an award of a lump sum payment of compensation, except an award for compensation under Section 7 or Paragraph (e) of Section 8 or for the injuries defined in the last paragraph of Paragraph (e) of Section 8 as constituting total and permanent disability, by filing his written rejection thereof with the said board within ten days after notice to him of the award, in which event compensation shall be payable in installments as herein provided. [As amended by Act approved June 28, 1915; in force July 1, 1915.

§ 185. Lump sum settlements. It is evident that an employer or his insurer who shall have become responsible for accident compensation, may desire to commute it to a lump sum, and that the beneficiary may be even more anxious to receive such lump sum. That lump sum payments, with proper safeguards, should be permitted, is obvious, because on the part of the employer, it may become necessary for him to terminate all his obligations to his injured workmen and others, and on the part of the employee and his dependents, circumstances may arise when to deny such a lump sum settlement would result in great hardship and distress or entire loss of the compensation. On the other hand the State is concerned in preventing dissipation of the money paid, and an early recourse to that charitable aid which systematic compensation aims to avoid. "There is nothing to ensure," say Sidney and Beatrice Webb, "that the incapacited workman or the widow does not lose or squander the sum handed over by the insurance company as compensation for the accident and eventually become as dependent on Poor Law Relief as if the community had provided nothing at all. As a matter of fact there are always among the paupers in the industrial districts

thousands of such cases, and their number increases annually."[1]

Lump sum awards should therefore be the exception and not the rule.[2]

The Illinois Act provides that the Industrial Commission, after full hearing, and proper notice to all concerned, may order commutation to a lump sum, if "it appears to the best interest of the parties that such compensation be so paid." It also provides for the convenience of the employer, by Section 25[3] that the employer may deposit the commuted value of total unpaid compensation, with the State or county treasurer, or other depository approved by the Industrial Commission, or purchase an annuity, in any legally authorized insurance company, in lieu of making installment payments.

The word "commutation" means the substitution of a specific sum of money for conditional payments, usually the substitution of a less thing for a greater, or the substitution of one kind of payment for another.[4]

§ 186. Lump sum proceedings. A lump sum settlement is only authorized where the petition presents legal evidence showing that it is to the best interest of the parties that the compensation be so paid, but it is not necessary for the petitioner to show that it is for the best interests of both parties.[5]

The Board or officer authorized by the statute to entertain a petition for lump sum settlement should consider all the circumstances of the parties in order to determine whether such a settlement should be permitted. For example, it has been held that the fact that the injured workman desired the lump sum so that he could live upon his unimproved farm and that he could

1 Prevention of Destitution, p. 182; Harper on Workmen's Comp., 1st Ed., § 166.

2 Roma v. Industrial Commission, 119 N. W. (O.) 461; State v. District Court, 158 N. W. (Minn.) 713, 14 N. C. C. A. 349.

3 *Post*, Chap. XVIII, p. 465.

4 Clark Co. v. Industrial Commission, 291 Ill. 561.

5 Forschner v. Industrial Board, 278 Ill. 99; Goelitz v. Industrial Board, 278 Ill. 164; Schwarm v. Thomson & Sons Co., 281 Ill. 486. But see Stanley v. Illinois Central R. R. Co., 186 Ill. App. 593; and Mateony v. Vierling Steel Works, 187 Ill. App. 448, 13 N. C. C. A. 715.

not support his family in town upon the weekly installments should be considered in passing upon his application for a lump sum and determining whether it was reasonable and proper.[6]

The judgment of the Board or officer vested with jurisdiction to entertain such a petition is final upon the question as to whether lump sum settlement should be authorized and approved, and such judgment will not be reviewed by the courts where the provisions of the statute have been followed.[7]

The statute does not prescribe the character of notice which shall be given nor the length of time nor the manner of service in a proceeding for a lump sum adjustment, but only that there shall be proper notice.

The constitution affords protection against the imposition of liability without notice and an opportunity to be heard. It is, therefore, held that, unless the record of the lump sum proceeding shows proper notice, the award should be set aside; and that the mere conclusion of the Commission or Board that the award was for the best interest of the parties would not be sufficient to sustain it.[8] But it has been held that notice to the Insurance Company who carry the compensation liability is not necessary.[9]

A lump sum award, even though not rejected by either party, as required by the statute, may be reviewed, like other awards, on the ground that the injury has recurred, increased or diminished.[10] But in Massachusetts, it is held that when a lump sum is awarded to cover partial loss of vision, it is an adjudication and compensation for further subsequent loss will be denied.[11] And in Kansas

[6] Texas Employers Insurance Association v. Downing, 218 S. W. (Tex.) 112.

[7] Schwarm v. Thomson & Sons Co., 281 Ill. 486; McMullen v. Gavette Construction Co., 175 N. W. (Mich.) 120, 16 N. C. C. A. 746; State v. Ohio Industrial Commission, 92 O. St. 434, 13 N. C. C. A. 713; Gorrell v. Battelle, 93 Kan. 370, 14 N. C. C. A. 351; McCorkle v. Red Star Mill & El. Co., 99 Kan. 131, 14 N. C. C. A. 351.

[8] Tazewell Coal Co. v. Industrial Commission, 287 Ill. 465.

[9] Hartsock v. Long, 124 N. E. (Ind. App.) 509.

[10] Peoria Ry. Co. v. Industrial Commission, 125 N. E. (Ill.) 1, 15 N. C. C. A. 632.

[11] McCarthy's Case, 226 Mass. 444.

it has been held that a lump sum award on the basis of permanent disability will not be set aside on a showing that an operation might permanently cure the injured man where the court having jurisdiction of the matter is given discretion to enter an award for a lump sum; and it is held that the making of a lump sum award under such circumstances is not an abuse of discretion.[12]

The question of reasonableness or unreasonableness of the amount allowed upon commuting of the compensation to a lump sum basis is for the Legislature and not for the courts.[13]

Before compensation can be commuted to a lump sum award, the compensation must have been previously determined by agreement or arbitration and the beneficiaries cannot be determined in the first instance in a proceeding for a lump sum settlement.[14]

In some states a lump sum settlement can only be approved when first consented to by the parties.[15]

The arbitration committees provided for in the Act[16] have no authority in proceedings before them for arbitration, or otherwise, to award a lump sum settlement.[17] Authority is expressly and exclusively vested for that purpose in the Industrial Commission alone; and that is the practice under the English Act,[18] except in the case of redemption of weekly payments, under the express provisions of Schedule 1, (17).[19] This schedule provides that the commutation shall be made "by the payment of a lump sum of such an amount as, where the incapacity is permanent, would, if invested in the purchase of an

[12] Raffaghelle v. Russell, 176 Pac. (Kas.) 640.

[13] Boyd v. Crowe Coal & Mining Co., 185 Pac. (Kas.) 9.

[14] Clarke Co. v. Industrial Commission, 291 Ill. 561; Roberts v. Wolf Packing Co., 95 Kan. 723, 14 N. C. C. A. 353.

[15] State v Dist. Court, 158 N. W. (Minn.) 713, 14 N. C. C. A. 349; Bailey v. U. S. F. & G. Co., 99 Nebr. 109, 14 N. C. C. A. 350; Pierce v. Boyer-Van Co., 99 Nebr. 321, 14 N. C. C. A. 350; Johansen v. Union Stkyds. Co., 99 Nebr. 328, 14 N. C. C. A. 351.

[16] *Post*, Chap. XIII, § 19 of the Act.

[17] Roper v. Hammer, 187 Pac. (Kan.) 858.

[18] Mulholland v. Whitehaven Colliery Co., (1910), 2 K. B. 278, 3 B. W. C. C. 319; Baird & Co. v. Dempster, (1909), S. C. 127, 2 B. W. C. C. 144.

[19] 6 Edw. VII, Chap. 58.

immediate life annuity from the National Debt Commissioners through the Post Office Savings Bank, purchase an annuity for the workman equal to seventy-five per cent of the annual value of the weekly payment."

The Illinois provision is for a definite commutation which "shall be an amount which shall equal the total sum of the probable future payments capitalized at their present value upon the basis of interest calculated at three percentum per annum with annual rests."

§ 187. "Probable future payments,"—construed. The words "probable future payments" make it apparent that the basis of estimate shall be the probable period of disability, or dependency, where a lump sum is petitioned for. In those disability cases were a definite amount of compensation is not fixed as conclusive of the period of incapacity, the "probable future payments" would be a proper subject of agreement, to be approved by the Industrial Commission upon the hearing of the petition for a lump sum payment, or for determination by the Commission itself, upon evidence as to probable duration of such incapacity. In other words, the "probable future payments" which would be due and payable, for the specific injury might be agreed upon, with the approval of the Commission, or they could be determined by the Commission, upon the hearing of the petition for a lump sum payment. The probable future period of incapacity having been determined in this manner, the gross amount of compensation due for such period is easily ascertainable, and the present value of such amount then estimated on the basis of three per cent interest, "with annual rests."

"Probable future payments" mean such payments as would ordinarily become payable in the natural course of events, taking into consideration, in death cases, the expectancy of the beneficiary, his age, health, and other elements which would enter into that consideration. Except in cases where the beneficiary is of extreme age it would not be improbable to presume that the beneficiary would live longer than the period over which the payments extend, and therefore the probable future pay-

ments would mean, in such case, all the payments. If therefore it should appear to be improbable that the future payments would amount to the whole compensation in installments, the lump sum settlement would be against the interest of the party entitled to compensation, and should therefore be denied unless there are other controlling considerations of greater weight and importance.[20]

§ 188. "Annual rests,"—defined. The computation of annual interest with periodical rests to ascertain the balance due, carrying the accrued interest over as part of the new principal, is not generally permitted, in the law of commercial paper, as this results in compounding interest.[21] It would therefore seem that the purpose of the words "with annual rests" is to indicate that interest is to be compounded annually, in ascertaining the present value of probable future payments.[22]

§ 189. Past payments. The Industrial Commission in determining the amount to be awarded as a lump sum settlement, and authorizing the same, should not consider payments which have been made from the date of the accident to the date of the application for a lump sum settlement. The Act is clear that it shall be on the basis of "probable future payments," and this is in accord with the English practice.[23]

§ 190. Six months' limitation. It is provided in this section that in cases of complete disability, "no petition for a commutation to a lump sum basis shall be entertained by the Industrial Commission until after the expiration of six months from the date of the injury." The language of the English Act is: "where any weekly payment has been continued for not less than six months, the liability therefore may, on application by or on behalf of the employer, be redeemed by the payment of a lump

[20] Clark Co. v. Industrial Commission, 291 Ill. 561.

[21] 22 Cyc. 1564.

[22] See Present Value Tables, *post*, p 569.

[23] Victor Mills v. Shackleton, (1912), 1 K. B. 22, 5 B. W. C. C. 30.

sum,"[24] etc. Under this provision, it has been held that the six months' limitation might we waived, and a lump sum awarded within the six months' period, by consent of the parties.[25] Under the English Act, however, the employer has the absolute right to redeem,[26] subject only to this six months' limitation; whereas, under the Illinois Act the whole matter is within the discretion of the Commission, and the language of the Act to the effect that in complete disability cases no petition "*shall be entertained*" until after the expiration of six months, would seem to go to the jurisdiction of the Commission, and exclude all cases in which compensation had not been paid for such period.

§ 191. Withdrawing petition. The Court of Appeal in Ireland has held that proceedings for a lump sum settlement may be withdrawn at any time, as in the case of other proceedings, subject to the payment of costs.[27]

Whether the Industrial Commission would have authority to rescind an order for a lump sum settlement, based upon mistake or misinformation, would depend upon the provisions of the statute defining the powers of the Commission.[28]

Under the Illinois Act, either party may reject an award of a lump sum, except in death cases, and in certain specified permanent disability cases referred to in Section 8.

[24] (6). Edw. VII, Chap. 58. Sched. I (17).

[25] Howell v. Blackwell, (1912), 5 B. W. C. C. 293.

[26] *Ibid.*

[27] Dixon v. Patton, (1905), 120 L. T. Newsp. 170.

[28] Spaduccino v. John G. Hayes & Co., 167 N. Y. Supp. 483, 16 N. C. C. A. 223.

CHAPTER X

BASIS FOR COMPUTING COMPENSATION

Sec. 10 of the Illinois Act

§ 10. The basis for computing the compensation provided for in Sections 7 and 8 of the Act shall be as follows:

(a) The compensation shall be computed on the basis of the annual earnings which the injured person received as salary, wages or earnings if in the employment of the same employer continuously during the year next preceding the injury.

(b) Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the employee was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause.

(c) If the injured person has not been engaged in the employment of the same employer for the full year immediately preceding the accident, the compensation shall be computed according to the annual earnings which persons of the same class in the same employment and same location, (or if that be impracticable, of neighboring employments of the same kind) have earned during such period.

(d) As to employees in employments in which

Sec. 10 of the Illinois Act

it is the custom to operate throughout the working days of the year, the annual earnings, if not otherwise determinable, shall be regarded as 300 times the average daily earnings in such computation.

(e) As to employees in employments in which it is the custom to operate for a part of the whole number of working days in each year, such number, if the annual earnings are not otherwise determinable, shall be used instead of 300 as a basis for computing the annual earnings: *Provided,* the minimum number of days which shall be so used for the basis of the year's work shall not be less than 200.

(f) In the case of injured employees who earn either no wage or less than the earnings of adult day laborers in the same line of employment in that locality, the yearly wage shall be reckoned according to the average annual earning of adults of the same class in the same (or if that is impracticable then of neighboring) employments.

(g) Earnings, for the purpose of this section, shall be based on the earnings for the number of hours commonly regarded as a day's work for that employment, and shall exclude overtime earnings. The earnings shall not include any sum which the employer has been accustomed to pay the employee to cover any special expense entailed on him by the nature of his employment.

(h) In computing the compensation to be paid to any employee, who, before the accident for which he claims compensation, was disabled and drawing compensation under the terms of this Act, the compensation for each subsequent injury shall be apportioned according to the proportion of incapacity and disability caused by the respective injuries which he may have suffered.

(i) To determine the amount of compensation for each installment period, the amount per annum shall be ascertained pursuant hereto, and

such amount divided by the number of installment periods per annum.

§ 192. Method of computation.[1] The general purpose of this section is to establish a standard for ascertaining what the injured workman's average earnings are at the time of the accident. The average annual earnings are to be taken as the basis for computation, if possible, in order that no injustice may be done either employer or employee, by estimating compensation on the basis of what the workman might be earning at the particular date of the accident, because obviously he might on that day be earning either much less or much more than he would normally earn. Furthermore, where the work is irregular or intermittent, a daily average might be inequitable as a basis for computation. But even though the wage is intermittent and irregular, if the employee has worked for the employer for the time specified in the statute, his earnings must be used as a basis for computing compensation, and not the wages of other employees, even though on that basis the compensation is insignificant as to amount.[2] But if the employee has not worked for a full year for the same employer, his compensation should be computed on the basis of the average wages of employees in the same class.[3]

If the average annual earnings are not otherwise determinable, 300 times the average daily earnings is taken as the basis for computation.[4]

[1] See tables for computing compensation, *post*, p. 586; see also: Hight v. York Mfg. Co., 100 Atl. (Me.) 8.

[2] Marvin's Case, 125 N. E. (Mass.) 154; King's Case, 125 N. E. (Mass.) 153.

[3] Ruda v. Industrial Board, 283 Ill. 550, 16 N. C. C. A. 751; Shaw v. American Body Co., 178 N. Y. Supp. 369; In re Cohan, 162 N. Y. Supp. 424; Claremont Country Club v. Industrial Accident Commission, 163 Pac. (Cal.) 209, 15 N. C. C. A. 447; Shafter Est. Co. v. Industrial Accident Commission, 166 Pac. (Cal.) 24; Northern Redwood Lumber Co. v. Industrial Accident Commission, 166 Pac. (Cal.) 828, 15 N. C. C. A. 1018; Mahaffey v. Industrial Accident Commission, 171 Pac. (Cal.) 298; Riley v. Mason Motor Co., 165 N. W. (Mich.) 745, 15 N. C. C. A. 78, 1024; Decatur Railway & Light Co. v. Industrial Board, 276 Ill. 472, 14 N. C. C. A. 139; 15 *Ibid*, 494, 1020.

[4] Beers v. Beers Bros., 168 N. Y.

In those employments where it is customary to work only a part of the year (for example, ice harvesting), the actual number of days worked during the previous year shall be used as the basis, the minimum number, however, not to be less than 200.[5]

The Supreme Court of Illinois in construing this section has said: "Reading all of said section together we think it is quite manifest that the legislature intended, if the employment operated all the working days of the year, and an injured employee's wages were not determinable otherwise, that three hundred should be taken as a basis from which to calculate his compensation; that if the employment operated only a part of the working days, such number, if the injured employee's annual earnings were not otherwise determinable, should be taken as a basis, but that in any event, no less than two hundred days should be used in such computation. Paragraph (c) has reference, obviously, to a situation where the employee has not worked for the same employer a full year prior to the accident, whether persons in that employment customarily worked for all the working days in the year or not. Paragraph (d) has reference solely to a situation where the employment operated all of such working days and provides the method of computing compensation if not otherwise determinable, while Paragraph (e) is intended to cover a different situation,—that is, ascertaining a basis where the working days are intermittent,—and here in this proviso an express limitation is added, viz., that no less than two hundred days shall be taken as the minimum. (Harper on Workmen's Compensation, Section 172.) Paragraph (e) does not provide, as do some of the other paragraphs, that if the annual earnings are not otherwise determinable two hundred days shall be used as a basis but does clearly state that

Supp. 86; Prentice v. N. Y. State Rys., 168 N. Y. Supp. 55; Richards v. Central Iowa Fuel Co., 159 N. W. (Ia.) 696, and 166 N. W. 1059, 15 N. C. C. A. 1014.

[5] Ruda v. Industrial Board, 283 Ill. 550, 16 N. C. C. A. 751.

in any event the minimum shall not be less than two hundred days, and this was the construction put upon this statute by the Industrial Board in this proceeding, and it has been so construed by the board in other cases. (Goodwin v. Peabody Coal Co., cited in note 8, N. C. C. A. 1189; Emert v. Big Muddy Coal Co., cited in note 13 Id. 1250.) A like line of reasoning was used as to construing a California statute in Rudder v. Ocean Shore Railroad Co., 9 N. C. C. A. 544 and note."[6]

§ 193. Earnings. Earnings are defined, in some measure, by Paragraph (g) of Section 10, where it is provided that they "shall be based on the earnings for the number of hours commonly regarded as a day's work for that employment, and shall exclude overtime earnings. The earnings shall not include any sum which the employer has been accustomed to pay the employee to cover any special expense entailed on him by the nature of his employment." Paragraph (a) of the section also provides that it shall include "salary, wages or earnings." In considering the language of this provision, "hours commonly regarded as a day's work," etc., the Supreme Court of Illinois has said: "We think the legislature intended by these various provisions of the Act to make a full day's work of eight hours the basis for ascertaining the average weekly earnings, and that it did not intend to take the week as the basis for it and find the average daily earnings by dividing by six, including the half-holiday on Saturday in reaching the basis of the average daily earnings."[7]

In another case the same court considering the language of this section, and defining the term "earnings" said:

"Paragraphs (*c*), (*d*), (*e*) and (*f*) of the same section make provisions for employees working under various other conditions and circumstances, and their compensation is also computed on the basis of their annual earnings arbitrarily fixed by those paragraphs. In

[6] Ruda v. Industrial Board, 283 Ill. 550, 16 N. C. C. A. 751.

[7] Ruda v. Industrial Board, 283 Ill. 550, 16 N. C. C. A. 751.

Paragraph (*c*) the annual earnings of the employees are the same as those of persons of the same class in the same employment and same location, etc. In Paragraph (*d*) the annual earnings, if not otherwise determinable, are 300 times the average daily earnings. For employees mentioned in Paragraph (*e*) the annual earnings are the average daily earnings multiplied by the actual number of days employed, such actual days to be not less than 200. For the employees mentioned in Paragraph (*f*) 'the yearly wage shall be reckoned according to the average annual earnings of adults of the same class in the same' employment, etc.

"It will be noted that in Paragraph (*f*) 'yearly wage' is used as the equivalent of the words 'annual earnings.' The words 'salary,' 'wages' and 'earnings' are all used in referring to the money or other compensation to be paid the employee for his services rendered. The three terms were evidently used by the legislature to cover any and all terms that various employers and employees might use to designate their wages or earnings. The word 'wage' is defined in the Standard Dictionary as payment for service rendered by artisans or laborers receiving a fixed sum per day, week or month or for a certain amount of work (piece work). The word 'salary' is defined in the same work as a periodical allowance made as compensation to a person for his official or professional services or for his regular work. This apt and significant language is then used: 'Labor is remunerated by wages and by salaries, wages being the remuneration of subordinates and salaries of officials.' The word 'earnings' is defined in the same work as money or other compensation to which one has a claim for services rendered; wages; desert; reward. The terms 'wage' and 'earning' are both commonly used in the plural. 'Earnings,' as commonly used, is the broadest term of the three, as it is a term that aptly applies to the pay received by both the laborer and the official or 'boss,' but as used in the statute it signifies no more than the word 'wages' if applied to a laborer and no more than the word 'salary' when applied to the

boss or official. The word 'earnings' in its general acceptation, does not mean net earnings unless qualified in some way. Smith v. Bates Machine Co., 182 Ill. 166."[8]

Earnings are to be determined not by what the employee was capable of earning, but by what he actually earned at the time of the accident.[9]

Where there is a conflict in the evidence, as to what the average annual earnings are, it is a question of fact,[9a] which is conclusively settled by the decision of the board or officer authorized to try questions of fact.[10]

In this connection it is a matter of no consequence that a part of the wages may be paid by one associated with the workman's immediate employer.[11]

The language of this section is very similar to the language of the first three sections of Schedule I of the English Act. In construing that Act, the House of Lords has defined earnings as the sum which the workman gets for his work when he comes to it properly equipped according to the general understanding and practice in a particular trade.[12]

It is held that earnings mean gross earnings and that, therefore, deductions should not be made for cleaning lamps, sharpening picks, supplying oil, etc.[13] Lord McNaughton said in a leading English case: "The word 'earnings' is used, not in the sense in which economic writers use it, but in a popular sense. * * * The difficulties would be endless if the court had to find out in each case the net remuneration received by the workman or the balance left for him to spend on himself and his family."[14]

[8] Springfield Coal Co. v. Industrial Commission, 291 Ill. 408.

[9] In re Rice, 118 N. E. 674.

[9a] Interstate Iron & Steel Co. v. Szot, 115 N. E. (Ind. App.) 599, 14 N. C. C. A. 127; 15 *Ibid*, 1027.

[10] Hickox v. Industrial Accident Commission, 169 Pac. (Cal.) 1048.

[11] Chicago Traction Co. v. Industrial Board, 282 Ill. 230.

[12] Abram Coal Co. v. Southern, (1903), A. C. 306, 308, 72 L. J. (K. B.) 691.

[13] Smith v. Bates Machine Co., 182 Ill. 166, 169; Springfield Coal Co. v. Industrial Commission, 291 Ill. 408; Houghton v. Sutton, 3 W. C. C. 173, (1901), 1 Q. B. 93.

[14] Abram Coal Co. v. Southern, (1903), A. C. 306, 308.

It has been held that production bonuses payable monthly for increased production by the employee paid with the wages of such employee may be considered a part of his wages in computing compensation.[15]

Earnings properly include the value of board and lodging, the free rent of stables or houses, and other valuable privileges of like kind which would not properly be considered as "special expense" within the meaning of Paragraph (g) of this section and which are in reality a part of the gross earnings of workmen.[16]

It has been held that in considering the value of such items as board and lodging in estimating compensation on the basis of gross earnings, the actual cost of such board and lodging, either to the employer or to the employee, should not be the sole test if there is any other means of estimating the actual value of such board and lodging.[17]

§ 194. Tips and gratuities. It has been held under the English Act that an employee whose earnings included, in part, certain commissions, and tips, should be entitled to compensation on the basis of his gross earnings, including such commissions and gratuities. This would seem to be the rule, where by reason of the nature of the employment it was customary and usual to give and receive tips, which custom is known to the employer, for it is frequently the tacit understanding between a workman and his employer that part of the earnings of the former shall be made up of gratuities.[18]

In a New York case it was held that the tips of a Pullman porter may properly be considered as a part of the wages of the employee, and taken into account in awarding compensation.[19]

Where, however, such gratuities are in the nature of

[15] Ciarla v. Solvay Process Co., 172 N. Y. S. 426.

[16] Dothie v. MacAndrew, (1908), 1 K. B. 803, 1 B. W. C. C. 308.

[17] Rosenquist v. Bowring, (1908), 2 K. B. 108, 1 B. W. C. C. 395.

[18] Bryant v. Pullman Co., 177 N. Y. Supp. 488; Hains & Strange v. Corbet, (1912), 5 B. W. C. C. 372; Knott v. Tingle, (1910), 4 B. W. C. C. 55; Sloat v. Rochester Taxicab Co., 163 N. Y. Supp. 904, 14 N. C. C. A. 425; 15 *Ibid*, 1016.

[19] Bryant v. Pullman Co., 177 N. Y. Supp. 488.

an illegal subsidy, or otherwise given in violation of rules, or to encourage a neglect or breach of the workman's duty, or are trivial in amount, they should not be included as a part of the workman's earnings.[20] Nor will "earnings" include things of value, which are incapable of being estimated in money, such as the value of tuition.[21]

§ 195. Special expenses. What should or should not be considered as special expenses, "which the employer has been accustomed to pay the employee," is often a question of considerable difficulty. For example, a railway employee is paid in addition to his regular wages, a certain fixed sum to cover the expense of his lodging when his duties required him to be away from home. Under the wording of this section, it would seem that such fixed sum ought not to be considered as a special expense. Again, it has been held that the cost to a miner of explosives which he used in his work, which cost was deducted from the wages paid him, should not be considered as special expense, and excluded from the computation of gross earnings.[22]

Under a similar provision in Iowa, however, it has been held that an amount expended for powder and blacksmithing, cannot be considered as earnings, but that such amount should be deducted from the gross earnings of the employee in fixing his compensation.[23]

§ 196. "Employment by the same employer in the grade," etc.—construed. Subdivision (b) of Section 10 provides that "employment by the same employer shall be taken to mean employment by the same employer in the grade in which the employee was employed at the time of the accident, uninterrupted by absence from work due to illness or other unavoidable cause." This language is identical with the language of Schedule I,

[20] Penn v. Spiers, (1908), 1 K. B. 766, 1 B. W. C. C. 401.

[21] Pomphrey v. Southwark Press, (1901), 1 Q. B. 86, 3 W. C. C. 194.

[22] Springfield Coal Co. v. Industrial Commission, 291 Ill. 408; Midland Ry. Co. v. Sharpe, (1904), A. C. 349, 6 W. C. C. 119; McKee v. Stein, (1910), S. C. 38, 3 B. W. C. C. 544.

[23] Richards v. Central Iowa Fuel Co., 166 N. W. (Iowa) 1059, 15 N. C. C. A. 1014.

1-3 of the English Act.[24] This language was considered, with his usual clarity, by Cozens-Hardy, M. R. in a case involving the construction of this language as follows:

"It is obvious that Section 1, construed by itself, deals with the ordinary case of a workman employed by only one employer and for a sufficient period to enable his 'earnings' or his 'average earnings' to be computed with mathematical accuracy. It does not contemplate concurrent contracts of service or employment, which in its nature is casual. For some reason which is not obvious, three years is the standard period in case of death, whereas twelve months is the standard period in case of partial incapacity, but in either case provision is made for taking an average for any less period. The actual history of the workman, furnishes adequate material in ordinary circumstances. Section 2 contemplates circumstances which, though not uncommon, may be deemed out of the ordinary course. It lays down certain rules which must be observed wherever the term 'earnings' or 'average weekly earnings' occurs in the schedule. The dominating principle is to be found in the first sentence of the clause, (a) 'average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the workman was remunerated.' This can scarcely be confined to one date,—namely, the date of the accident; for under Section 1 (a) and (b) it is clear that other dates cannot be disregarded. Then follows a proviso which contemplates that there may be cases in which computation is impracticable. No mandatory words are there used, the phrase is simply, 'regard may be had.' The sentence is not grammatical, but I think the meaning is this—where you cannot compute, you must estimate, as best you can, the rate per week at which the workman was being remunerated, and to assist you in making an estimate you may have regard to analogous cases. Whether the task is 'impracticable' must be decided as at the date of the accident. This may be due to death, loss of books, or

[24] 6 Edw. VII, Chap. 58.

other circumstances. The rate of remuneration may have to be ascertained or estimated, not merely at the date of the accident, but during some earlier period. For example, a collier who has been for twelve months employed in a colliery whose books have been all burnt, is entitled under Section 1 (b) to compensation based upon his average weekly earnings during that period. It cannot be that the proviso has no operation in such a case. The analogous cases referred to in the proviso by way of guides, are the average weekly amount which during the twelve months previous to the accident was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person in the same grade, employed in the same class of employment and in the same district. This language is borrowed from Section 3 of the Employers' Liability Act, 1880. I am not aware that the word 'grade' in this connection has ever been interpreted. I think it refers to the particular rank in the industrial hierarchy occupied by the workman, such as shepherd, carter, or common laborer on a farm, or mason or bricklayer or bricklayer's laborer in the building trade, and not to his greater or less excellence in that rank. It is a question of fact whether there is any 'grade' to which the workman belongs, and it is likewise a question of fact what is the average weekly amount earned in any particular grade. If there is no grade, an estimate must nevertheless be made. The section primarily contemplates highly organized industries, but it is impossible to limit the Act to such industries. Having found that the man has a particular grade, there is no obligation to adopt those average wages as the basis of compensation. The personal element then comes in. It will still be open to consider whether the individual workman is an average man or is above or below an average man. This must be so where men in a particular grade are employed on piece work. You cannot reject evidence of the skill and efficiency of the individual workman; where payment is at so much per hour for every man in a particular grade, the skill and efficiency

of the individual, may perhaps be disregarded, though I am not prepared to say that the age and the habits of the individual may not have such an influence upon his chance of employment, as to deserve consideration. The wages earned at the date of the accident cannot be the sole test. Such a test would operate most unfairly sometimes for and sometimes against the workman. There are many employments in which the work is more plentiful and wages are higher at some seasons of the year than at others. For example, the wages of agricultural laborers are higher during harvest. In all cases in which accurate mathematical computation is impracticable, the object aimed at should be to estimate what I may call the normal rate of remuneration of the injured man. This is the main overriding idea, and to this idea, every doubtful suggestion must yield. Days in which no work is done and no wages are earned must be disregarded, except in the one case provided for in Section 1 (a). * * * Section 2 (c) defines 'employment by the same employer.' Its language is very obscure, but I understand it to mean this. Any step up or down, from one grade to another is to be regarded as commencing a fresh employment. But in calculating any of the periods mentioned in Section 1, you are to disregard absence due to illness or to causes beyond the control of the workman, and to reckon the employment as continuous, notwithstanding any such absence. This will only be a presumption which may be rebutted by evidence that the workman was in fact discharged on the ground of such absence and subsequently reengaged."[25]

We also quote from Moulton, L. J., in the same case.[26] as follows: "It is there provided that 'employment by the same employer shall be taken to mean employment by the same employer in the grade in which the workman was employed at the time of the accident.' This makes it clear that in taking the average, we are restricted to the period during which the workman has been employed in the same grade. If, therefore, he has

[25] Perry v. Wright, (1908), 1 K. B. 441, 1 B. W. C. C. 351.

[26] *Ibid.*

been promoted by the employer to a higher grade, and is in this grade at the time of the accident, his earnings when in the lower grade are not to be taken in consideration in obtaining the average which is to give his 'average weekly earnings.' I must not be understood as saying that an increase of wages will necessarily have the effect of excluding from the calculatibn of this average, the weeks in which the lower rate of wages have been given, because a man's wages may rise or fall without any change of grade taking place. But if there has been a change of grade, they must be excluded. For instance, if an ordinary seaman has been promoted to be an able-bodied seaman, and continues in that grade up to the date of the accident, Section 2 (c) excludes from the calculation of his average weekly earnings the period during which he has been an ordinary seaman. This rule will suffice for the majority of cases. But it may be that the circumstances existing at the date of the accident, and during the period immediately before it (defined in the way I have just described), may not furnish adequate material to enable a fair average to be arrived at. The schedule deals with such cases by the provisions to be found in the latter part of Section 2 (a). It will be observed that up to this point we have been dealing, as is natural, exclusively with matters personal to the particular workman, and probably without the existence of special provisions in that behalf a court would feel itself confined to such matters in admitting evidence for the purpose of estimating his average weekly earnings. But the provisions of the latter part of Section 2 (a) empower the court in cases where the shortness of the time during which the workman has been in the employment of his employer, or the casual nature of his employment, or the terms of the employment render it impracticable to compute the rate of remuneration at the date of the accident, to resort for assistance in estimating that rate to matters relating to workmen of the same grade employed at the same work by the same employer, or even, should this fail, to persons in the same grade employed in the same class of employment

in the same district. These provisions do not appear to me to show any intention on the part of the legislature to depart from the fundamental principles with which I have dealt. Their object is only to give greater freedom to the courts in the admission of evidence in cases where the ordinary modes of computing the average weekly earnings fail, and here again they seem to permit or prescribe the same process which would be ordinarily followed in practice by sensible men. But this extraneous assistance is to be treated by the court only as help."

Average weekly earnings is the basis of computation under the English Act, as distinguished from average annual earnings under the Illinois Act, but it is average weekly earnings in disability cases for a year prior to the injury, so that the difference is not great, and the principle of the two statutes would seem to be the same, viz., to compute the earnings in such manner as is best calculated to give the average rate of earnings during the year preceding the injury.

§ 197. Grade of employment. Under the English authorities it would seem clear that any alteration in the grade of the employment would require that the period prior to the alteration be disregarded, for, as we have seen: "Any step up or down from one grade to another is to be regarded as commencing a fresh employment."[27]

It has been held that the fact that the deceased workman had received a smaller sum in previous employments would not deprive the dependents of the benefit of the average wage received in that employment by an employee of the same class working the year through.[28]

Where a workman was previously employed by the same employer and went out on a strike, and was afterwards re-employed in work of a different character, it

[27] *Ibid;* see also, Babcock & Wilcox v. Young, (1911), S. C. 406, 4 B. W. C. C. 367; Gough v. Crawshay, 1 B. W. C. C. 351; (1908), 1 K. B. 441.

[28] Bylow v. St. Regis Paper Co., 166 N. Y. Supp. 874, 15 N. C. C. A. 239, 1022; Adams v. Boorum & Pease Co., 166 N. Y. Supp. 97, 15 N. C. C. A. 1022.

was held that a new contract relation was created at a different wage scale, and that his compensation should be computed on the basis of his average wage during the days when he was so employed.[29]

A workman was employed to operate an acetylene welder. While awaiting the arrival of the machine, he was directed to work as a helper building tanks. When the machine arrived, he worked on it for five days, and then went back to work on the tank temporarily, and while at this work sustained an injury. As a tank builder he was paid 22½c per hour, and as an acetylene welder he was to have received 40c an hour. It was held proper to compute his compensation on the basis of 40c per hour.[30]

§ 198. "Illness or any other unavoidable cause,"—construed. Also, by the express provisions of the law, a break in the employment is caused by "absence from work, due to illness or any other unavoidable cause."[31] The period prior to such absence should therefore be disregarded in computing the average earnings.

The opinion has been expressed that any absence which is "unavoidable" from the workman's point of view, should be included as within the meaning of that term.[32] In the same English case, however, it was declared[33] that time occupied by normal and recognized holidays in the works should be deducted, but not absences occasioned by a breakdown in the works. Said the learned Judge: "In this case, the sole question is as to the quantum of the compensation. The accident was not a fatal one, so that we have to ascertain the rate at which the workman was being remunerated at the time of the accident, from a consideration of the earnings in the twelve months immediately preceding the accident if he was in the same employment within the meaning of Section 2 (c) during the whole of that

[29] Brown v. Central West Coal Co., 166 N. W. (Mich.) 850.

[30] Bundy v. Petroleum Products Co., 172 Pac. (Kan.) 1020.

[31] § 10 (b).

[32] Cozens-Hardy, M. R., in Bailey v. Kenworthy, (1908), 1 K. B. 441, 1 B. W. C. C. 371.

[33] *Ibid.* By Fletcher Moulton, L. J.

period. As a matter of fact, he was in the employment of the same employer in the same grade throughout the whole of the preceding twelve months, and such employment was continuous except for the occurrence of certain holidays, such as the Wakes Week, Christmas, Easter, etc., and various short stoppages on account of accidents to the machinery and to a canal adjoining the works. In my opinion, none of these constitute absence from work from unavoidable causes such as are referred to in Section 2 (c), inasmuch as they are not *ejusdem generis* with illness. I am therefore of opinion that we have here the earnings of a complete twelve months, which we are entitled and required to use for the purpose of obtaining the average weekly earnings. * * * In other words, the earnings in a week of full work are to that extent higher than the average weekly earnings in the employment, because there is incident to it an enforced idleness of two weeks in the year. The week during which the workman was absent from work on account of breakdown in the works stands in a different position. If such interruptions were a normal and recognized incident, I should consider that they might be treated in the same way as the stoppages with which I have just dealt. Otherwise I should consider that accidental interruptions of that kind ought not to be considered as affecting the rate of remuneration which the workman was receiving."

It would therefore seem that incidental stoppages of work, owing to slackness of trade or recognized holidays, should not be regarded as "any other unavoidable cause." Following the opinion expressed by Cozens-Hardy, M. R., apparently, the county court judge held in a later English case [84] that slackness of work was no fault of the workman, and should be disregarded in awarding compensation, but the Court of Appeal held that regard must be had to those weeks in which the workman had not been able to earn full wages owing to slackness of trade, as this was an incident of the employ-

[84] White v. Wiseman, (1912), 28 T. L. R. 542, 5 B. W. C. C. 654.

ment.[35] A miner had been employed for over twelve months in the same grade and in the same employment. He earned 68 pounds but only worked for 33 weeks. The remainder of the 52 weeks were made up of 14 weeks of stoppage, 2 weeks of public holidays, 2 weeks' absence owing to illness, and 1 week's voluntary absence. The weeks made up of stoppage and public holidays were found to be *normal and recognized incidents* of the employment. It was held that the proper way to compute his average weekly earnings was to divide the 68 pounds by 33, and then to make a fractional deduction of 16/52, the true calculation being represented by the fraction 36/52 of 68/33.[36] In other words, if the stoppage is a normal and recognized incident of the employment by reason of the nature of the employment, so that the employee may reasonably be held to have anticipated such stoppages when he entered the employment, it should be deducted in computing his compensation for injuries sustained.

[35] *Ibid*, see also, Anslow v. Cannock, (1909), A. C. 435, 2 B. W. C. C. 365; Carter v. Lang, (1908), S. C. 1198, 45 S. L. R. 938, 1 B. W. C. C. 379; Bailey v. Kenworthy, (1908), 1 K. B. 441, 3 B. W. C. C. 351, 371. The language of Fletcher Moulton above quoted has been approved by the Court of Appeal and the House of Lords in the *Anslow* case, *supra*, which case definitely settles the question in England at least.

[36] Anslow v. Cannock, (1909), A. C. 435, 2 B. W. C. C. 365.

CHAPTER XI

STATUTORY LIABILITY EXCLUSIVE

§ 199. Compensation liability — exclusive.

Sec. 11 of the Illinois Act

§ 11. The compensation herein provided, together with the provisions of this Act shall be the measure of the responsibility of any employer engaged in any of the enterprises or businesses enumerated in Section three (3) of this Act, or of any employer who is not engaged in any such enterprises or businesses, but who has elected to provide and pay compensation for accidental injuries sustained by any employee arising out of and in the course of the employment according to the provision of this Act, and whose election to continue under this Act, has not been nullified by any action of his employees as provided for in this Act. [Amended by Act approved June 25, 1917.

§ 199. Compensation liability—exclusive. This section, limiting the responsibility of employers under the Act to the compensation liability imposed by it, is the correlative of Section 6 *ante*, Chapter V, which limits the rights of injured employees and their dependents to the compensation prescribed by the Act. The common law right of action is abolished by the Compensation Act, except as in the Act otherwise provided.[1] And if a

[1] Keeran v. P. B. & C. Traction Co., 277 Ill. 413, 16 N. C. C. A. 404; Yeancey v. Taylor Coal Co., 199 Ill. App. 14, 17 N. C. C. A. 526; Zenor v. Spokane & I. E. R. Co., 186 Pac. (Wash.) 849; Nulle v. Hardman Peck & Co., 173 N. Y. S. 236.

plaintiff is awarded compensation and has received installments thereof as they have become due, he cannot afterwards maintain an action against the employer for exemplary damages in addition to compensation on the theory of the gross negligence of the employer.[2]

It has been held, however, that a regular employee, who is injured on a day when he is not working for his employer by the negligence of the employer's servants, may maintain a common law action against the employer for negligence.[3]

It has been said that compensation awarded under the Workmen's Compensation Act is not damages for injuries sustained but is compensation pure and simple, being merely another term for salary or wages, and that in cases of injury, provision is merely made for the payment of a special or reduced salary.[4]

The liability under Elective Compensation Acts has been held to be a contract liability, however, and as to whether, under such an Act, the action under the statute for causing death by wrongful act should be barred, especially as against negligent third persons, is a question of some doubt under the authorities.[5]

It has been held that a County may not be sued, under a provision of the statute that a suit may be brought against a County "on its contracts."[6]

Under Section 6 of the Act we discussed the relation of the doctrine of election of remedies to the provisions of Sections 6 and 11 of this Act.[7] If an employee clearly has a right to claim compensation under the Act and prosecutes such a claim against his employer with-

[2] Stricklen v. Pearson Construction Co., 169 N. W. (Iowa) 628.

[3] Cox v. United States Coal & Coke Co., 92 S. E. (W. Va.) 559, 15 N. C. C. A. 272.

[4] Woodcock v. Board of Education, 187 Pac. (Utah) 181.

[5] Diebiekis v. Link Belt Co., 261 Ill. 609; Lavin v. Wells Bros., 272 Ill. 609, 16 N. C. C. A. 885, 17 *Ibid*, 260; Keeran v. P. B. & C. Traction Co., 277 Ill. 413, 16 N. C. C. A. 404; Yeancey v. Taylor Coal Co., 199 Ill. App. 14, 17 N. C. C. A. 526; Dettloff v. Hammond Standish Co., 161 N. W. (Mich.) 949, 14 N. C. C. A. 901; City v. S. W. Gas & El. Co., 74 So. (La.) 559; El Dorado v. Mariotti, 215 Fed. 51, 7 N. C. C. A. 966.

[6] Clarke v. Cass Counties, 161 Pac. (Ore.) 702.

[7] *Ante*, Chap. V.

out success, he cannot thereafter proceed against his employer for damages at common law.[8]

In other words, mere failure to recover on the part of a workman, who is clearly within the terms of the Act and clearly entitled to compensation, will not give him a right to proceed in law for damages.[9] It is only in those cases where the workman is mistaken in his remedy and believes he is under the Act when he is not, or the Industrial Commission has no jurisdiction of the case because it is not properly within the terms of the Act, or otherwise, that he has any right to proceed at law for damages.[10] And it has been held that the claimant is not required to make an election between a common law action for damages and compensation under the Act until he knows definitely which is the more to his advantage, and that, therefore, an uncollectible judgment against the wrong doer would not bar the claimant's right to compensation under the Act.[11]

It has been held in Ireland that the purpose of the provision in the English law which is, "the employer shall not be liable to pay compensation for an injury * * * both independently of and also under this Act,"[12] was to protect the employer against *double payment* and not *double proceedings*.[13] But this reason has not been accepted by either the Court of Appeal of England or the Court of Session of Scotland.[14]

It has been held that an election by an administrator cannot bar a claim on behalf of individuals who are given definite rights under the statute.[15]

[8] Dettloff v. Hammond Standish Co., 161 N. W. (Mich.) 949, 14 N. C. C. A. 901.

[9] Burton v. Chapel Coal Co., (1909), S. C. 430, 2 B. W. C. C. 120; Cribb v. Kynochs, (1908), 2 K. B. 555, 1 B. W. C. C. 45.

[10] Garrett v. Farwell Co., 191 Ill. 436, 441; Crinieri v. Gross, 172 N. Y. S. 695.

[11] Swader v. Kansas Flour Mills Co., 176 Pac. (Kas.) 143.

[12] 6 Edw. 7, Chap. 58, § 1 (2), (b).

[13] Beckley v. Scott, (1902), 2 L. R. 504. See also, Edwards v. Godfrey, (1899), 2 Q. B. 333, 6 W. C. C. 44.

[14] Cribb v. Kynochs, (1908), 2 K. B. 555, 1 B. W. C. C. 45, *supra;* Burton v. Chapel Coal Co., (1909), S. C. 430, 2 B. W. C. C. 120, *supra.*

[15] In re Balias, 178 N. Y. S. 519.

CHAPTER XII

PHYSICAL EXAMINATION OF THE EMPLOYEE

Sec. 12 of the Illinois Act

§ 12. An employee entitled to receive disability payments shall be required, if requested by the employer, to submit himself, at the expense of the employer, for examination to a duly qualified medical practitioner or surgeon selected by the employer, at a time and place reasonably convenient for the employee, as soon as practicable after the injury, and also one week after the first examination and thereafter at intervals not oftener than once every four weeks, which examination shall be for the purpose of determining the nature, extent and probable duration of the injury received by the employee, and for the purpose of ascertaining the amount of compensation which may be due the employee from time to time for disability according to the provisions of this Act: *Provided, however,* that such examination shall be made in the presence of a duly qualified medical practitioner or surgeon provided and paid for by the employee, if such employee so desires. In all cases where the examination is made by a surgeon engaged by the employer and the injured employee has no surgeon present at such examination, it shall be the duty of the surgeon making the examination at the instance of the employer to deliver to the injured employee, upon his request or that of

Sec. 12 of the Illinois Act

his representative a statement in writing of the condition and extent of the injury to the same extent that said surgeon reports to the employer. If the employee refuses so to submit himself to examination or unnecessarily obstructs the same, his right to compensation payments shall be temporarily suspended until such examination shall have taken place, and no compensation shall be payable under this Act for such period. It shall be the duty of surgeons treating an injured employee who is likely to die and treating him at the instance of the employer to have called in another surgeon, to be designated and paid for by either the injured employee or by the person or persons who would become his beneficiary or beneficiaries, to make an examination before the death of such injured employee. [As amended by an Act approved June 28, 1915, in force July 1, 1915.

§ 200. Physical examination. It is competent for the legislature to require one seeking compensation for injuries, to submit to a reasonable physical examination to ascertain the extent and probable duration of such injuries.[1] And where it appears that the employer has requested a physical examination before and at the time of the hearing, it is error for the Commission to proceed without compelling the employee to submit to an examination.[2]

In some jurisdictions it has been held that such an examination may be ordered by the court, without express statutory authority, but not so in Illinois.[3]

Manifestly, if the employer is to pay compensation in all cases of injury, and is bound to furnish proper medical and surgical treatment, he should be given a reasonable opportunity to ascertain what the injuries are, their

1 Texas Employers' Ins. Assn. v. Downing, 218 S. W. (Tex.) 112.

2 Hafer Coal Co. v. Industrial Com., 293 Ill. 425.

3 Parker v. Enslow, 102 Ill. 272, 5 Ill. Notes 336, § 131; Joliet St. Ry. Co. v. Call, 143 Ill. 177, 6 Ill. Notes 877, § 71.

extent and probable duration, by physical examination of the injured employee.

It is only the employee who has given notice of injury, and who is "entitled to receive disability payments" who is required to submit to such an examination. This right of examination is given to any "employer" as defined by the provisions of the law.[4]

Where the statute permits an autopsy for the purpose of clearing up obscure cases, it has been held that the right is to be exercised with caution, as it is calculated, under the most favorable circumstances to cause distress of mind to the family of the deceased, and that therefore if the autopsy would be useless because of the fact that the body had been embalmed before the time the request for the autopsy is made, the refusal of it will not deprive the dependents of the right to compensation.[5]

§ 201. Examination must be reasonable—question of fact. It has been held that this is a personal right of the employer, and that no conditions may be imposed, so long as the request is made in accordance with the statute, and is reasonable under all the circumstances.[6] In discussing the like provision of the English Act, it is said:

"Schedule 1 (4) of the Workmen's Compensation Act confers upon the employer a right to have a workman who has given notice of an accident, examined medically, and there is a duty on the part of the workman to submit himself to examination, but the statute is silent, and the rules are partially, and I may say mainly, silent as to the time, the place and the conditions of this examination. Under those circumstances practically the common rule of law applies and imposes upon both parties the duty of acting *reasonably* in obeying the statute. Now it seems to me that the question whether or not one side or the other has acted reasonably in a

[4] See §§ 4 and 31 of the Act.

[5] Indianapolis Abattoir Co. v. Bryant, 119 N. E. (Ind. App.) 24.

[6] Osborn v. Vickers, (1900), 2 Q. B. 91, 2 W. C. C. 130; Morgan v. Dixon, (H. L.), (1912), A. C. 74, 5 B. W. C. C. 184.

particular case, is a question of fact in that particular case."[7]

Section 12 of the Illinois Act provides that the object of such examination shall be "for the purpose of determining the nature, extent and probable duration of the injury received by the employee, *and for the purpose of ascertaining the amount of compensation* which may be due the employee."

The same right of medical examination is given the Industrial Commission by the provisions of Section 19 (c), of the Act and this power is manifestly given for the purpose of "ascertaining the amount of compensation" to be paid the employee, because that is the first and primary duty of the Commission. A reasonable construction of the two provisions, however, would be that the fact that the employer is by this section given the right of a medical examination for the purpose of determining the amount of compensation payable, should not preclude such an enquiry on the part of the Industrial Commission, because it is clear that the examination by the employer would in most cases be desired and requested even where no appeal is taken to the Industrial Commission, and few if any cases could be adjusted by agreement of the parties, if such an examination were not permitted, without prejudice to the rights of the parties if later the claim is presented to the Industrial Commission. The two provisions should be considered as entirely distinct and separate. One is for the personal benefit of the employer, and the other is primarily for the benefit of the Commission, as arbitrator. The results of the examination made by the employer, and the report of his physician thereon, should in no sense be held binding or conclusive on the Commission, whose duty it is to examine into all questions relating to the alleged disability, and the amount of compensation which should be paid therefor.

[7] *Ibid.*

CHAPTER XIII

THE INDUSTRIAL COMMISSION

Secs. 13 to 17 of the Illinois Act

§ 13. (a) There is hereby created a board which shall be known as the Industrial Commission to consist of five members to be appointed by the Governor, by and with the consent of the Senate, two of whom shall be representative citizens of the employing class operating under this Act, and two of whom shall be representative citizens of the class of employees operating under this Act, and one of whom shall be a representative citizen not identified with either the employing or employee classes and who shall be designated by the Governor as chairman. Appointment of members to places on the first board or to fill vacancies on said Commission may be made during recesses of the Senate, but shall be subject to confirmation by the Senate at the next ensuing session of the Legislature.

(b) When there shall become effective the Act known as "The Civil Administrative Code of Illinois," being an Act entitled "An Act in relation to the civil administration of the State Government," there shall thereupon be vested in the Industrial Commission and the industrial officers thereof by said Act created, all of the powers and duties vested in the Industrial Board by the Workmen's Compensation Act, and thereupon wherever in the Workmen's Compensation Act

17 reference shall be made to the Industrial Board,
the board or to any member thereof, it shall
18 be construed as referring and shall apply to the said Industrial Commission, the said Commission, and any industrial officer thereof, respectively. [Amended by Act approved June 25, 1917.

§ 14. The salary of each of the members of the Commission appointed by the Governor shall be Five thousand dollars ($5,000.00) per year. The Commission shall appoint a secretary and shall employ such assistants and clerical help as may be necessary.

The salary of the arbitrators designated by the Commission shall be at the rate of Three thousand dollars ($3,000.00) per year.

The members of the Commission and the arbitrators shall have reimbursed to them their actual traveling expenses and disbursements made or incurred by them in the discharge of their official duties while away from their places of residence in the performance of their duties. The Commission shall provide itself with a seal for the authentication of its orders, awards, and proceedings, upon which shall be inscribed the name of the Commission and the words "Illinois—Seal." [Amended by Act approved June 28, 1919.

§ 15. The Industrial Commission shall have jurisdiction over the operation and administration of this Act, and said Commission shall perform all the duties imposed upon it by this Act, and such further duties as may hereafter be imposed by law and the rules of the Commission not inconsistent therewith.

§ 16. The Commission may make rules and orders for carrying out the duties imposed upon it by law, which rules and orders shall be deemed *prima facie* reasonable and valid; and the process and procedure before the Commission shall be as simple and summary as reasonably may be. The Commission upon application of either party may

Secs. 13 to 17 of the Illinois Act

issue *dedimus potestatem* directed to a commissioner, notary public, justice of the peace or any other officer authorized by law to administer oaths, to take the depositions of such witness or witnesses as may be necessary in the judgment of such applicant. Such *dedimus potestatem* may issue to any of the officers aforesaid in any state or territory of the United States or in any foreign country. The Commission shall have the power to adopt necessary rules to govern the issue of such *dedimus potestatem.* The Commission, or any member thereof, or any arbitrator designated by said Commission shall have the power to administer oaths, subpoena and examine witnesses, to issue subpoenas *duces tecum,* requiring the production of such books, papers, records and documents as may be evidence of any matter under inquiry, and to examine and inspect the same and such places or premises as may relate to the question in dispute. Said Commission, or any member thereof, or any arbitrator designated by said Commission, shall on written request of either party to the dispute, issue subpoenas for the attendance of such witnesses and production of such books, records and documents as shall be designated in said applications, *providing, however,* that the parties applying for such subpoena shall advance the officer and witness fees provided for in suits pending in the circuit court. Service of such subpoenas shall be made by any sheriff or constable or other person. In case any person refuses to comply with an order of the Commission or subpoena issued by it or any member thereof, or any arbitrator designated by said Commission or to permit an inspection of places or premises, or to produce any books, papers, records, or documents, or any witness refuses to testify to any matters regarding which he may be lawfully interrogated, the county court of the county in which said hearing or matter is

Secs. 13 to 17 of the Illinois Act

pending, on application of any member of the Commission or any arbitrator designated by the Commission, shall compel obedience by attachment proceedings, as for contempt, as in a case of disobedience of the requirements of a subpoena from such court on a refusal to testify therein.

The Commission at its expense shall provide a stenographer to take the testimony and record of proceedings at the hearings before an arbitrator, committee of arbitration, or the Commission, and said stenographer shall furnish a transcript of such testimony or proceedings to any person requesting it upon payment to him therefor of five cents per one hundred words for the original and three cents per one hundred words for each copy of such transcript.

The Commission shall have the power to determine the reasonableness and fix the amount of any fee or compensation charged by any person for any service performed in connection with this Act, or for which payment is to be made under this Act or rendered in securing any right under this Act. [Amended by Act approved May 31, 1917.

§ 17. The Commission shall cause to be printed and furnish free of charge upon request by any employer or employee such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this Act, and the performance of the duties of the Commission; it shall provide a proper record in which shall be entered and indexed the name of any employer who shall file a notice of declination or withdrawal under this Act, and the date of the filing thereof; and a proper record in which shall be entered and indexed the name of any employee who shall file such a notice of declination or withdrawal, and the date of the filing thereof; and such other notices as may be required by the

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terms and intendment of this Act; and records in which shall be recorded all proceedings, orders and awards had or made by the Commission, or by the arbitration committees, and such other books or records as it shall deem necessary, all such records to be kept in the office of the Commission.

§ 202. Creation and organization of Industrial Commission. Sections 13 and 17 inclusive of the act relate to the creation, appointment and organization of the Industrial Commission. Boards of administration, arbitration, etc., are created by the laws of many of the states and given quasi-judicial powers, for the purpose of determining, with more or less finality, most of *the* questions which may arise in the administration of *the* compensation law. Certainly one of the primary purposes of workmen's compensation legislation is to avoid the delays and expense of litigation, with all its attendant evils, and the settlement of compensation claims by agreement or arbitration is therefore encouraged as much as possible, and resort to the courts is discouraged so far as the limitations of the fundamental law will permit. Where state boards are established, as in Illinois, the right to an ultimate appeal to the courts with reference to some questions involved is almost universally recognized, but access to the common law courts is made as difficult as reasonably may be. In short the maxim "he gives twice who gives quickly," so conspicuously pertinent, in the case of injured workmen, is reflected in as summary and untechnical procedure as is deemed compatible with justice to both parties.

§ 203. Judicial power not vested in the Commission. The Illinois Industrial Commission is not vested with such wide powers as the administration boards created by the compensation laws of some of the other states, notably Ohio and Washington, but the question of the power of the legislature to confer upon the Commission the quasi-judicial authority given them by the Act is one of importance.

The authority to ascertain the facts, and apply the law to the facts when ascertained, appertains as well to the other departments of the government as to the judiciary. Judgment and discretion are required by all departments. It would be difficult to draw the precise line between those functions that may be constitutionally devolved upon the other departments, and those which pertain strictly to the judiciary; and so far as we are aware, the attempt has not been made. But in numerous instances, from an early period, the legislatures have invested various boards, bodies and officers with the power, and charged them with the duty of ascertaining facts, and hearing and deciding questions, when deemed necessary or expedient in order to carry into execution laws enacted to accomplish some public purpose, or deemed for the general public good. Of this nature, are those powers conferred on boards of county commissioners, and township trustees, to determine upon the necessity and propriety of establishing, improving, altering, and vacating public roads and ditches, and to ascertain and decide whether the necessary steps required by the law have been taken in the proceedings, and these and other boards and officers have been clothed with the power to determine which of several bidders for public works or contracts is the lowest responsible one, and tax review bodies have been authorized to make additions to tax levies, and many other instances of like kind might be mentioned; and the laws conferring such powers provide in some manner and degree, and for some purpose, the exercise of the power to hear and determine important questions of a quasi-judicial character, often involving large interests. This class of legislation has in the main been sustained by the courts.

The principles of law applicable to the public boards and bodies referred to have been applied in compensation cases, involving the powers of the administrative officers charged with the duty of administering such laws. The courts uniformly hold that arbitrators and industrial boards and commissions and compensation

commissioners, etc., are administrative officers, and have no judicial functions.[1]

Of course, under an Elective Act, the parties to the employment relation were not obliged to accept the Act, with the method of administration and settlement of injury claims therein provided, and the objection that the creation of the Industrial officers with authority to administer the law was an unconstitutional delegation of judicial power could not well be made.[2] Under compulsory laws, where the administrative machinery is definitely fixed by the statute, it is held that the Act becomes practically automatic in its working, and that the powers delegated to the Industrial Commission are administrative, merely, and not judicial.[3] Proceedings before such Commission are not judicial proceedings, properly so-called, although they may have some of the elements of judicial proceedings. The Commission is not a court, however, but purely a ministerial body, having jurisdiction over the operation and administration of the Act, with power to make rules and orders for carrying out the duties imposed upon it by law.[4]

§ 204. The Wisconsin precedent. The Wisconsin Compensation Act[5] which is very similar in general policy and plan to the Illinois Act creates an Industrial Commission to administer the Act, in much the same manner provided in the Illinois Act. The law was attacked on the ground that it vested judicial and legislative power in a body which was not a court nor a legis-

1 Savoy Hotel Co. v. Industrial Board, 279 Ill. 329, 16 N. C. C. A. 746, 17 *Id.* 251; Johnson v. Choate, 284 Ill. 214; Grand Trunk Western Ry. Co. v. Industrial Commission, 291 Ill. 167; United Paperboard Co. v. Lewis, 117 N. E. (Ind. App.) 276, 15 N. C. C. A. 688; Solvuca v. Ryan & Reilly Co., 101 Atl. (Md.) 710, 17 N. C. C. A. 477; Industrial Commission v. Evans, 174 Pac. (Utah) 825, 17 N. C. C. A. 1058; Deibeikis v. Link Belt Co., 261 Ill. 454, 5 N. C. C. A. 401; N. Y. Cent. R. Co. v. White, 243 U. S. 188, 13 N. C. C. A. 943, and see cases on constitutionality of workmen's compensation laws, *ante*, pp. 22, 134.

2 Deibeikis v. Link Belt Co., 261 Ill. 454, 5 N. C. C. A. 401.

3 Grand Trunk Western Ry. v. Industrial Commission, 291 Ill. 167.

4 Mississippi Power Co. v. Industrial Commission, 289 Ill. 353; Industrial Commission v. Evans, 174 Pac. (Utah) 825, 17 N. C. C. A. 1058.

5 Wis. Laws, 1911, Chap. 50.

lative body, and that it was therefore unconstitutional. The Supreme Court of that State, discussing the question said:

"The next important contention is that the law is unconstitutional because it vests judicial power in a body which is not a court and is not composed of men elected by the people, in violation of those clauses of the State constitution which vest the judicial power in certain courts and provide for the election of judges by the people, as well as in violation of the constitutional guarantees of due process of law. It was suggested at the argument that the Industrial Commission might perhaps be held to be a court of conciliation, as authorized to be created by Section 16 of Article VII of the State constitution, but we do not find it necessary to consider or decide this contention. We do not consider the Industrial Commission a court, nor do we construe the Act as vesting in the Commission judicial powers within the meaning of the Constitution. It is an administrative body or arm of the government which in the course of its administration of a law is empowered to ascertain some questions of fact and apply the existing law thereto, and in so doing acts quasi-judicially, but it is not thereby vested with judicial power in the constitutional sense.

"There are many such administrative bodies or commissions, and with the increasing complexity of modern government they seem likely to increase rather than diminish. Examples may be easily thought of—town boards, boards of health, boards of review, boards of equalization, railroad rate commissions, and public utility commissions all come with this class. They perform very important duties in our scheme of government, but they are not legislatures or courts. The legislative branch of the government by statute determines the rights, duties and liabilities of persons and corporations under certain conditions of fact, and varying as the facts and conditions change. Manifestly the legislature cannot remain in session and pass a new Act every change of condition, but it may and does commit to an

administrative board the duty of ascertaining when the facts exist which call into activity certain provisions of the law, and when conditions have changed so as to call into activity other provisions. The law is made by the legislature, the facts upon which its operation is dependent are ascertained by the administrative board. While acting within the scope of its duty, or its jurisdiction, as it is sometimes called, such a board may lawfully be endowed with very broad powers, and its conclusions may be given great dignity and force, so that courts may not reverse them unless the proof be clear and satisfactory that they are wrong. M. St. P. & S. S. M. R. Co. v. R. R. Com., 136 Wis. 146. Not only this, but many such boards are created whose decisions of fact honestly made within their jurisdiction are not subject to review in any proceeding. State ex rel v. Chittenden, 112 Wis. 569; State ex rel v. Wharton, 117 Wis. 558; State ex rel Cook v. Houser, 122 Wis. 534-561; State ex rel v. Trustees, 138 Wis. 133."[6]

§ 205. The Ohio precedent. The Ohio compensation law is a State Insurance Act, and provides for an insurance fund to be administered by the State Commission created by the Act for the purpose of fixing compensation rates, collecting the premiums from employers, passing upon claims, and paying awards, etc. The Commission was given much wider and larger powers than the Industrial Commission under the Illinois Act.

The same question presented to the Wisconsin court was also raised under the Ohio law, and was disposed of in the same manner, as follows:

"It is insisted that the Act delegates judicial power to the Board of Awards, and denies recourse to the courts and trial by jury. Of course if the Board is a court, there is an end of the whole matter. The statute would be unconstitutional. For if the Board is a court, it has not been created in accordance with the manner provided by the constitution. We do not consider the

[6] Borgnis v. Falk Co., 147 Wis. 327, 2 N. C. C. A. 834.

Board of Awards a court, or invested with judicial power within the meaning of the constitution. It is created by the Act, purely as an administrative agency to bring into being and administer the insurance fund, and the fact that it is empowered to classify persons who come under the law and to ascertain facts as to the application of the fund does not vest it with judicial power within the constitutional sense.

"Under our system the executive department of the government has many boards to assist in the administration of its affairs. In State ex rel v. Hawkins, 44 Ohio St. 98, it is said: 'What is judicial power cannot be brought within the ring-fence of a definition. It is undoubtedly power to hear and determine, but this is not peculiar to the judicial office. Many of the acts of administrative and executive officers involve the exercise of the same power.' The court then shows that many boards hear and determine questions affecting private as well as public rights, and quotes with approval from State ex rel v. Harmon, 31 Ohio St. 250: 'The authority to ascertain facts and apply the law to the facts when ascertained pertains as well to other departments of government as to the judiciary.'

"These principles were applied in France v. State, 57 Ohio St. 1, in which case the court remark, that the case of State v. Guilbert, 56 Ohio St. 576, forms no exception, for the powers of the recorder under the statute there in question were essentially those which properly belong to a court."[7]

[7] State ex rel. v. Creamer, 85 Ohio St. 349, 401, 1 N. C. C. A. 30; see also, State v. Mountain Timber Co., 135 Pac. (Wash.) 645; Cunningham, etc., v. N. W. Improvement Co., 44 Mont. 180, 1 N. C. C. A. 720, and State v. Clausen, 65 Wash. 165, 2 N. C. C. A. 823. See also, the case of John Den v. Hoboken Land & Improvement Co., 18 Howard, 272, which is instructive upon this subject.

This was a case of ejectment in which both parties claimed title under Samuel Swartwout—the plaintiff under levy of an execution and the defendants under sale by a marshal of the United States on a distress warrant. The warrant was levied under an act of Congress on the property of Swartwout, who was collector of customs and was issued by the Solicitor of the Treasury to collect a balance due from Swart-

§ 206. Delegation of powers—other cases. In a case involving the "Torrens law" of the State of Illinois, enacted in 1897, it was contended that it was unconstitutional as conferring judicial power upon the registrar of titles. The Supreme Court discusses in a general way, the constitutional limitations on the various departments of the State government as follows:

wout. The proceeding was summary and was based upon a certificate of the Comptroller of the Treasury.

It was claimed that the law was unconstitutional on the ground that the claim involved an issue of fact which should have been adjudicated by a court under the first and second sections of the third article of the Constitution. The court considered these limitations in connection with the due process of law provision. It says:

"It must be admitted that, if the auditing of this account and the ascertainment of its balance and the issuing of this process was an exercise of the judicial power of the United States, the proceeding was void, for the officers who performed these acts could exercise no part of that judicial power. They neither constituted a court of the United States nor were they, or either of them, so connected with any such court as to perform even any of the ministerial duties which arise out of judicial proceedings."

Speaking of the distinctions between judicial and administrative powers it says:

"To avoid misconstruction upon so grave a subject we think it proper to state that we do not consider Congress can either withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty; nor, on the other hand, can it bring under the judicial power a matter which, from its nature, is not a subject for judicial determination. At the same time there are matters, involving public rights, which may be presented in such form that the judicial power is capable of acting on them and which are susceptible of judicial determination, but which Congress may or may not bring within the cognizance of the courts of the United States, as it may deem proper. Equitable claims to land by the inhabitants of ceded territories form a striking instance of such a class of cases, and as it depends upon the will of Congress whether a remedy in the courts shall be allowed at all in such cases they may regulate it and prescribe such rules of determination as they may think just and needful. Thus it has been repeatedly decided in this class of cases that upon their trial the acts of executive officers, done under the authority of Congress, were conclusive, either upon particular facts involved in the inquiry or upon the whole title."

This case is peculiarly instructive in many respects, for not only on the one hand does it contain a fine analysis of the limitations prescribed by due process of law so far as the administrative agency of the Government is concerned in the exercise of judicial functions, but also, on the other hand, does it disclose how the judicial branch of the Government constantly exercises administrative functions through the various extrajudicial remedies available to private persons in the courts in the form of summary methods used to protect rights and to obtain control of property.

"That the duties mentioned are judicial in their nature may be admitted, but it does not necessarily follow that their exercise is prohibited, by the constitutional provision, to all but officers belonging to the judicial department. Numerous instances may be cited, as is done in Owners of Lands v. People, 113 Ill. 296, where executive and legislative officers are authorized to exercise powers which in a sense are judicial and the laws imposing such duties held not to be in violation of the constitutional provision quoted. These duties or powers are generally and properly termed '*quasi* judicial,' to distinguish them from those which are judicial in the sense of belonging to the judicial department exclusively. In theory all governmental power is divided into the three named divisions, and upon a casual consideration, the division would seem to present no difficulty, but in the practical application of the principles involved the courts have been compelled to observe that the line of demarkation between the exclusive powers of the three departments is far from clear. (6 Am. & Eng. Ency. of Law, 2nd Ed., 1007.) Judge Cooley in his work on Constitutional Limitations on the Legislative Branch of the Government, has given a definition of 'judicial power.' It is this: 'The power which adjudicates upon and protects the rights and interests of individual citizens, and to that end construes and applies the laws.' As a general definition of the functions of the judicial department, it is sufficiently accurate. * * * The definition given by Judge Cooley does not attempt to mark the line between those *quasi* judicial functions which may be vested elsewhere, and those strictly judicial, which can be reposed nowhere save in the courts, and for that reason it cannot be properly adopted in this case. As we said in another case: 'It may in many cases be a matter of difficulty to determine the precise line which divides the executive and judicial functions. It has been said that where the functionary hears, considers and determines, then he performs judicial acts. This definition is not strictly accurate. * * * It embraces cases that are not judicial, and hence is too comprehensive.' (Donahue v.

Will County, 100 Ill. 94, on p. 108.) * * * 'So while the powers of courts seem so very simple and clearly defined, yet in the application of them to actual cases, their proper limits are often difficult to determine.' (Dodge v. Cole, 97 Ill. 338, on p. 357.) Also: 'The *first* and second sections of the first article of the const*itution* (1818) divide the powers of government into three departments,—the legislative, executive and judicial,—and declare that neither of these departments shall exercise any of the powers properly belonging to either of the others, except as expressly permitted. This is a declaration of a fundamental principle, and, although one of vital importance, it is to be understood in a limited and qualified sense. It does not mean that the legislative, executive and judicial power should be kept so entirely distinct and separate as to have no connection or dependence, the one upon the other; but its true meaning, both in theory and practice is, that the whole power of two or more of these departments shall not be lodged in the same hands, whether of one or of many.' (Field v. People, 2 Scam. 79, on p. 83.)"[8]

It has also been held by the Illinois Supreme Court that judicial power is not conferred upon inspectors by the State Fire Escape Act;[9] nor upon Civil Service Commissioners, by the Civil Service Act;[10] nor upon the prison board, by the Indeterminate Sentence Act.[11]

[8] People v. Simon, 176 Ill. 165, 7 Ill. Notes 854, § 72. Citing 1 Story on the Constitution, 5th Ed., § 525.

[9] Arms v. Ayers, 192 Ill. 601, 8 Ill. Notes 49, § 248.

[10] People v. Kipley, 171 Ill. 44, 7 Ill. Notes 688, § 19; People v. Loeffler, 175 Ill. 585, 7 Ill. Notes 845, § 224; Kipley v. Luthardt, 178 Ill. 525, 7 Ill. Notes 919, § 204.

[11] George v. People, 167 Ill. 447, 7 Ill. Notes 576, § 229. See also, on the question of delegation of powers to executive boards or officers: Field v. Clark, 143 U. S. 649; In re Kollock, 165 U. S. 526; Railroad Co. v. Commissioners, 1 O. St. 77; Union Bridge Co. v. United States, 204 U. S. 364; Monongahela Bridge v. United States, 216 U. S. 177; Martin v. Witherspoon, 135 Mass. 175; Butterfield v. Stranahan, 192 U. S. 470; St. L. I. M. & S. Ry. Co. v. Taylor, 210 U. S. 281; Isenhour v. State, 157 Ind. 517. *Cases contra:* A decision of the Baltimore court of Common Pleas which is apparently in direct conflict with Wisconsin and Ohio cases quoted *supra*, was rendered in 1902, prior to the enactment of either the Wisconsin or Ohio compensation laws. The case was never passed on by the Supreme

Court of Maryland. The act creating the Maryland Co-operative Insurance Fund, was held unconstitutional by the Common Pleas court, the court saying:

"For the handling and disbursement of this entire fund 'plenary power' was lodged in the hands of the insurance commissioner, thus investing him with judicial or quasi-judicial power, and that without any provision for a trial by jury, or any right of appeal from his conclusions. Had the act stopped here, it might well have been argued that inasmuch as it provided for a fund for the benefit of certain widows and orphans who would otherwise be remediless, it was within the power of the legislature to place the administration of that fund in the hands of such officials as it might see fit. But the act did not stop with the provisions already referred to, but also embraced cases where the death had been caused by the negligence of the employer; cases where there would be a clear right of action in the courts under existing law. It also enacted that the employers who made the payments provided in the act should by such payments be exempted from further liability.

"The effect of the act was, therefore, not only to vest in the insurance commissioner powers and functions essentially judicial in their character, but to take away from citizens a legal right which they had theretofore enjoyed, and which could be enforced by them in the courts, and also to deny to them the right to have their cases heard before a jury. It is only necessary to clearly understand the provisions of this act to see that they are in direct conflict with several of the provisions of the constitution of the state. Thus, article 5 of the declaration of rights assures to the people the right of a trial by jury. Article 19 gives to every one for injury done to him in his person or property a remedy by the course of the law of the land. Yet both of these guarantees are completely ignored by the act in question.

"Without prolonging the matter, therefore, it is so clearly evident that the act in question is framed in total disregard of the provisions of the constitution that the act must be declared void, and the demurrer sustained." Franklin v. United Rys. Co., 57 Bulletin U. S. Labor Bureau, 689.

The following cases may also be referred to as instances where in the opinion of the courts, judicial or legislative power has been held to be improperly conferred upon executive boards or officers, viz.: Gilbert v. Priest, 65 Barb. 448; Callahan v. Judd, 23 Wis. 348; State v. Guilbert, 56 Ohio St. 575; State v. Hyde, 121 Ind. 33; Sanders v. Cabaniss, 43 Ala. 180; State v. Leclair, 86 Me. 531; Lewis v. Webb, 3 Greenl. (Me.) 332; State v. Hampton, 13 Nev. 442; Mitchell's Admr. v. Champaign County, 10 O. C. D., 801; Maxwell v. State, 40 Md., 273; People v. Bennett, 29 Mich. 451; Fogg v. Union Bank, 60 Tenn. 435; Winters v. Hughes, 3 Utah 443; Scott v. Clark, 1 Ia. 70; Pilkey v. Gleason, 1 Ia. 522; Anderson v. Manchester Fire Assur. Co., 59 Minn. 182; Cleveland, etc., R. Co. v. People, 212 Ill. 638, 8 Ill. Notes, 563, § 307; Hall v. Marks, 34 Ill. 358, 2 Ill. Notes 347, § 121; People v. Mallary, 195 Ill. 582, 8 Ill. Notes 118, § 262; City of Aurora v. Schoeberlein, 230 Ill. 496, 8 Ill. Notes, 950, § 209.

CHAPTER XIV

ADMINISTRATION OF THE ACT BY THE INDUSTRIAL COMMISSION AND THE COURTS

Secs. 18, 19 and 20 of the Illinois Act

§ 18. All questions arising under this Act, if not settled by agreement of the parties interested therein, shall, except as otherwise provided, be determined by the Industrial Board.

§ 19. Any disputed question of law or fact shall be determined as herein provided.

(a) It shall be the duty of the Industrial Commission upon notification that the parties have failed to reach an agreement, to designate an arbitrator: *Provided,* that if the compensation claimed is for a partial permanent or total permanent incapacity or for death, then the dispute may, at the election of either party, be determined by a committee of arbitration, which election for determination by a committee shall be made by petitioner filing with the Commission his election in writing with his petition or by the other party

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filing with the Commission his election in writing within five days of notice to him of the filing of the petition, and thereupon it shall be the duty of the Industrial Commission, upon either of the parties having filed their election for a committee of arbitration as above provided, to notify both parties to appoint their respective representatives on the committee of arbitration. The Commission shall designate an arbitrator to act as chairman, and if either party fails to appoint its member on the committee within seven days after notification as above provided, the Commission shall appoint a person to fill the vacancy and notify the parties to that effect. The party filing his election for a committee of arbitration shall with his election deposit with the Commission the sum of twenty dollars, to be paid by the Commission to the arbitrators selected by the parties as compensation for their services as arbitrators, and upon a failure to deposit as aforesaid, the election shall be void and the determination shall be by an arbitrator designated by the Commission. The members of the committee of arbitration appointed by either of the parties or one appointed by the Commission to fill a vacancy by reason of the failure of one of the parties to appoint, shall not be a member of the Commission or an employee thereof.

(b) The arbitrator or committee of arbitration shall make such inquiries and investigations as he or they shall deem necessary, and may examine and inspect all books, papers, records, places, or premises relating to the questions in dispute, and hear such proper evidence as the parties may submit. The hearings before the arbitrator or committee of arbitration shall be held in the vicinity where the injury occurred, after ten days' notice of the time and place of such hearing shall have been given to each of the parties or their attorneys of record. The decision

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of the arbitrator or committee of arbitration shall be filed with the Industrial Commission, which Commission shall immediately send to each party or his attorney a copy of such decision, together with a notification of the time when it was filed, and unless a petition for a review is filed by either party within fifteen days after the receipt by said party of the copy of said decision and notification of time when filed, and unless such party petitioning for a review shall within twenty days after the receipt by him of the copy of said decision, file with the Commission either an agreed statement of the facts appearing upon the hearing before the arbitrator or committee of arbitration, or if such party shall so elect, a correct stenographic report of the proceedings at such hearings, then the decision shall become the decision of the Industrial Commission and in the absence of fraud shall be conclusive: *Provided*, that such Industrial Commission may for sufficient cause shown grant further time, not exceeding thirty days, in which to petition for such review or to file such agreed statement or stenographic report. Such agreed statement of facts or correct stenographic report, as the case may be, shall be authenticated by the signatures of the parties or their attorneys and in the event they do not agree as to the correctness of the stenographic report it shall be authenticated by the signature of the arbitrator designated by the Commission.

(c) The Industrial Commission may appoint, at its own expense, a duly qualified impartial physician to examine the injured employee and report to the Commission. The fee for this service shall not exceed five dollars and traveling expenses, but the Commission may allow additional reasonable amounts in extraordinary cases. The fees and the payment thereof of all attorneys and physicians for services authorized by the Commission under this Act shall, upon request of

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either the employer or the employee or the beneficiary affected, be subject to the review and decision of the Industrial Commission.

(d) If any employee shall persist in insanitary or injurious practices which tend to either imperil or retard his recovery or shall refuse to submit to such medical or surgical treatment as is reasonably essential to promote his recovery, the Commission may, in its discretion, reduce or suspend the compensation of any such injured employee.

(e) If a petition for review and agreed statement of facts or stenographic report is filed, as provided herein, the Industrial Commission shall promptly review the decision of the arbitrator or committee of arbitration and all questions of law or fact which appear from the said statement of facts or stenographic report, and such additional evidence as the parties may submit. After such hearing upon review, the Commission shall file in its office its decision thereon, and shall immediately send to each party or his attorney a copy of such decision and a notification of the time when it was filed.

Such review and hearing may be held in its office or elsewhere as the Commission may deem advisable: *Provided,* that the taking of testimony on such hearing may be had before any member of the Commission and in the event either of the parties may desire an argument before others of the Commission such argument may be had upon written demand therefor filed with the Commission within five days after the commencement of such taking of testimony, in which event such argument shall be had before not less than a majority of the Commission: *Provided,* that the Commission shall give ten days' notice to the parties or their attorneys of the time and place of such taking of testimony and of such argument.

In any case the Commission in its decision may

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in its discretion find specially upon any question or questions of law or fact which shall be submitted in writing by either party, whether ultimate or otherwise. Any party may, within twenty days after receipt of notice of the Commission's decision, or within such further time, not exceeding thirty days, as the Commission may grant, file with the Commission either an agreed statement of the facts appearing upon the hearing or, if such party shall so elect a correct stenographic report of the additional proceedings presented before the Commission, in which report the party may embody a correct statement of such other proceedings in the case as such party may desire to have reviewed, such statement of facts or stenographic report to be authenticated by the signatures of the parties or their attorneys, and in the event that they do not agree, then the authentication of such stenographic report shall be by the signature of any member of the Commission. The applications for adjustment of claim and other documents in the nature of pleadings filed by either party, together with the decisions of the arbitrator and of the Industrial Commission and the statement of facts or stenographic reports hereinbefore provided for in Paragraphs (b) and (c) shall be the record of the proceedings of said Commission, and shall be subject to review as hereinafter provided.

(f) The decision of the Industrial Commission, acting within its powers, according to the provisions of Paragraph (e) of this section shall, in the absence of fraud, be conclusive, unless reviewed as in this paragraph hereinafter provided.

(1) The Circuit Court of the county where any of the parties defendant may be found shall by writ of *certiorari* to the Industrial Commission have power to review all questions of law presented by such record, except such as arise in a proceeding in which under Paragraph (b) of

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this section a decision of the arbitrator or committee of arbitration has become the decision of the Industrial Commission. Such writ shall be issued by the clerk of such court upon *praecipe*. Service upon any member of the Industrial Commission or the secretary thereof shall be service on the Commission and service upon other parties interested shall be by *scire facias*, or service may be made upon said Commission and other parties in interest by mailing notice of the commencement of the proceedings and the return day of the writ to the office of said Commission and the last known place of residence of the other parties in interest at least ten days before the return day of said writ. Such suit by writ of *certiorari* shall be commenced within twenty days of the receipt of notice of the decision of the Commission.

The Industrial Commission shall not be required to certify the record of their proceedings to the Circuit Court, unless the party commencing the proceedings for review in the Circuit Court, as above provided, shall pay to the Commission the sum of five cents per one hundred words of testimony taken before said Commission and three cents per one hundred words of all other matters contained in such record.

(2) No such writ of *certiorari* shall issue unless the one against whom the Industrial Commission shall have rendered an award for the payment of money shall upon the filing of his *praecipe* for such writ filed with the clerk of said court a bond conditioned that if he shall not successfully prosecute said writ, he will pay the said award, and the costs of the proceedings in said court. The amount of the bond shall be fixed by any member of the Industrial Commission and the surety or sureties on said bond shall be approved by the clerk of said court.

The court may confirm or set aside the decision of the Industrial Commission. If the decision is

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set aside and the facts found in the proceedings before the Commission are sufficient, the court may enter such decision as is justified by law, or may remand the cause to the Industrial Commission for further proceedings, and may state the questions requiring further hearing, and give such other instructions as may be proper.

Judgments and orders of the Circuit Court under this Act shall be reviewed only by the Supreme Court upon a writ of error which the Supreme Court in its discretion may order to issue, if applied for not later than the second day of the first term of the Supreme Court following the rendition of the Circuit Court judgment or order sought to be reviewed, provided that if the first day of said term is less than thirty days from the rendition of said judgment or order, then application for said writ of error may be made not later than the second day of the second term following the rendition of said judgment or order.

The writ of error when issued shall operate as a *supersedeas*.

The bond filed with the *praecipe* for the writ of *certiorari* as provided in this paragraph shall operate as a stay of the judgment or order of the Circuit Court until the time shall have passed within which an application for a writ of error can be made, and until the Supreme Court has acted upon the application for a writ of error, if such application is made.

The decision of a majority of the members of a committee of arbitration or of the Industrial Commission shall be considered the decision of such committee or Commission, respectively.

(g) Either party may present a certified copy of the decision of the Industrial Commission, when no proceedings for review thereof have been taken, or of the decision of such arbitrator or committee of arbitration when no claim for review is made, or of the decision of the Industrial

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Commission after hearing upon review, providing for the payment of compensation according to this Act, to the Circuit Court of the county in which such accident occurred or either of the parties are residents, whereupon said court shall render a judgment in accordance therewith; and in case where the employer does not institute proceedings for review of the decision of the Industrial Commission and refuses to pay compensation according to the award upon which such judgment is entered, the court shall, in entering judgment thereon, tax as costs against him the reasonable costs and attorney fees in the arbitration proceedings and in the court entering the judgment, for the person in whose favor the judgment is entered, which judgment and costs, taxed as herein provided shall, until and unless set aside, have the same effect as though duly rendered in an action duly tried and determined by said court, and shall, with like effect, be entered and docketed. The Circuit Court shall have power, at any time, upon application, to make any such judgment conform to any modification required by any subsequent decision of the Supreme Court upon appeal, or as the result of any subsequent proceedings for review, as provided in this Act.

Judgment shall not be entered until fifteen days' notice of the time and place of the application for the entry of judgment shall be served upon the employer by filing such notice with the Industrial Commission which Commission shall, in case it has on file the address of the employer or the name and address of its agent, upon whom notices may be served, immediately send a copy of the notice to the employer or such designated agent; and no judgment shall be entered in the event the employer shall file with the said Commission its bond, with good and sufficient surety in double the amount of the award, conditioned upon the payment of said award in the event the

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said employer shall fail to prosecute with effect proceedings for review of the decision or the said decision, upon review, shall be affirmed.

(h) An agreement or award under this Act, providing for compensation in installments, may at any time within eighteen months after such agreement or award be reviewed by the Industrial Commission at the request of either the employer or the employee, on the ground that the disability of the employee has subsequently recurred, increased, diminished or ended; and on such review, compensation payments may be reestablished, increased, diminished or ended: *Provided,* that the Commission shall give fifteen days' notice to the parties of the hearing for review: *And, provided, further,* any employee, upon any petition for such review being filed by the employer, shall be entitled to one day's notice for each one hundred miles necessary to be traveled by him in attending the hearing of the Commission upon said petition and three days in addition thereto, and such employee, shall, at the discretion of the Commission, also be entitled to five cents per mile, necessarily traveled by him in attending such hearing not to exceed a distance of 300 miles, to be taxed by the Commission as costs and deposited with the petition of the employer.

(i) Each party, upon taking any proceedings or steps whatsoever before any arbitrator, committee of arbitration, Industrial Commission or court, shall file with the Industrial Commission his address, or the name and address of an agent upon whom all notices to be given to such party shall be served, either personally or by registered mail addressed to such party or agent at the last address so filed with the Industrial Commission: *Provided,* that in the event such party has not filed his address, or the name and address of an agent, as above provided, service of any notice

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may be had by filing such notice with the Industrial Commission.

(j) Whenever in any proceeding testimony has been taken or a final decision has been rendered, and after the taking of such testimony, or after such decision has become final, the injured employee dies, then in any subsequent proceeding brought by the personal representative or beneficiaries of the deceased employee, such testimony in the former proceeding may be introduced with the same force and effect as though the witness having so testified were present in person in such subsequent proceeding and such final decision, if any shall be taken as a final adjudication of any of the issues which are the same in both proceedings.

(k) In any case where there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation, or proceedings have been instituted or carried on by the one liable to pay the compensation, which do not present a real controversy, but are merely frivolous or for delay, then the Commission may award compensation additional to that otherwise payable under this Act equal to fifty percentum of the amount payable at the time of such award. [Amended by Act approved June 28, 1919.

§ 20. The Industrial Board shall report in writing to the Governor on the 30th day of June, annually, the details and results of its administration of this Act, in accordance with the terms of this Act, and may prepare and issue such special bulletins and reports from time to time as in the opinion of the board, seems advisable.

§ 207. "All questions arising under this act." Obviously one of the primary purposes of the workmen's compensation system is to abolish the common law tort remedy in master and servant cases, with all its attendant evils of uncertainty, waste, delay, etc. It encourages

peaceful settlements and arbitrations, and discourages, and, so far as the fundamental law will permit, forbids, all litigation. Arbitration, as a method of settling disputes, has always been looked upon with favor by the courts.[1]

The Illinois Act provides[2] that "all questions arising under this Act" if not settled by agreement shall be submitted to the Industrial Commission, in the first instance, for arbitration.

§ 208. "All questions arising,"—construed. The language of the English Act is "if any question arises * * * if not settled by agreement shall * * * be settled by arbitration."[3] Under this provision it has been held that before the arbitrator has any jurisdiction, some "question" must arise, and that an injured employee cannot, without first attempting to settle his claim, or without being refused or denied by his employer, appeal for arbitration. To give the arbitrator jurisdiction there must be some denial of liability to pay, or some dispute in regard to the amount or duration of the compensation.[4]

In a leading case it was said: "There must, first of all, be a 'question' between the parties, and then there is another condition, which may or may not oust the jurisdiction—namely, that the question is not settled by agreement. * * * The mere giving of a notice of a claim for compensation did not raise a 'question' between the parties. The 'question' to be settled by arbitration must be a question as to the liability to pay compensation, or as to the amount or duration of compensation."[5]

[1] Merritt v. Merritt, 11 Ill. 565, 1 Ill. Notes 361, § 418; McDonald v. Arnout, 14 Ill. 58, 1 Ill. Notes 460, § 52; Root v. Renwick, 15 Ill. 461, 1 Ill. Notes 545, § 421; Tyblewski v. Svea Fire & Life Assur. Co., 121 Ill. App. 528, 10 Ill. Notes 876, § 269.

[2] § 18.

[3] 6 Edw. VII, Chap. 58, § 1 (3).

[4] Sweeney v. Gourlay Bros. & Co., (1906), 8 F. 597, 965, 43 S. L. R. 690; Field v. Longden & Sons, (1902), 1 K. B. 47, 4 W. C. C. 20; Jones v. Great Central Ry. Co., (1901), 18 T. L. R. 65, 4 W. C. C. 23.

[5] Field v. Longden & Sons, (1902), 1 K. B. 47, 4 W. C. C. 20.

Again, it was said: "The question raised in this case seems to me to be one of great importance, because it comes to this, whether an employer, perfectly willing to yield to the law and give the workman all that he is entitled to, can escape the penalty of litigation. In this case it is clear that the employer was willing to do everything that the law obliged him to do."[6]

The California Industrial Accident Board in passing upon a claim made under the compensation law of that state, applied this rule, and among other things say: "The purpose of the California Act is to afford a quick and convenient method of settling claims for personal injuries sustained by a workman, and to avoid litigation. The workman must first apply to his employer for the compensation allowed under this Act, and cannot appeal to this Board until the employer refuses to pay the compensation. * * * We desire to concur with the statements made in the Smith case, *supra,* ('that the Workmen's Compensation Act was intended for the benefit of workmen and not for the benefit of the legal profession,'—Smith v. Abbey Pk. Laundry Co., 2 B. W. C. C. 142) and are of the opinion that they apply with equal force here."[7]

An admission of some liability by the employer, accompanied by a request that the question of further liability be determined, raises a 'question' for arbitration.[8] Likewise, it has been held that insistence by the employer upon the dependent securing letters of administration, in order to qualify for giving a full release, raised a 'question' for arbitration.[9] But the mere starting of proceedings, without giving the employer an opportunity to admit or deny the claim, will not give the arbitrator jurisdiction.[10]

[6] Jones v. Gt. Cent. Ry. Co., (1901), 18 T. L. R. 65, 4 W. C. C. 23.

[7] Christy v. Standard Oil Co., Rep. Cs. Calif. Indstr. Bd., No. 4, May 10, 1912.

[8] Bowhill Coal Co. v. Malcolm, (1909), S. C. 426, 2 B. W. C. C. 131.

[9] Clatworthy v. Green, (1902), 86 L. T. 702, 4 W. C. C. 152.

[10] Caledon Ship. & Engr. Co. v. Kennedy, (1906), 43 S. L. R. 430, 687; see also Plant v. Oldnall Col-

A workman was incapacitated by accident. His employer tendered him full compensation, but asked him to sign a receipt for the payments, to the effect that each payment involved no admission of liability to pay any compensation thereafter. The workman refused to sign the receipt, and brought proceedings for arbitration. It was held that there was a question as to the duration of compensation, and the proceedings were properly brought.[11]

In another case, where a workman was incapacitated by accident, his employers admitted liability, and paid full compensation, stating that this would be continued as long as their doctor certified to the incapacity. The workman commenced arbitration proceedings, alleging that a question had arisen as to the duration of the compensation, and it was held that no question had arisen.[12]

Contrary to these decisions, however, and also to what seems to be the obvious spirit and intention of the Illinois Act, the Supreme Court of the State has held that "it is not essential that a claim shall have been made previous to presenting the claim to the commission, provided that the latter claim shall have been presented and the employer notified within the six months."[13] According to both the spirit and the letter of the law, there must be some "question" arise between employer and injured employee, or his dependents, with reference to the right to compensation, the period of disability, etc., in order to give the Commission jurisdiction. Section 18 of the Act provides that "All *questions* arising under this Act, *if not settled by agreement of the parties interested therein*, shall, except as otherwise provided, be determined by the Industrial Commission." And by Section 19 it is provided that "any *disputed question* of law or fact shall be determined as herein provided," viz., by the filing of a claim with the Industrial Commission, and

liery Co., (1903), 114 L. T. Newsp. 284.

11 Freeland v. Summerlee Iron Co., (1912), 49 Sc. L. R. 841, 5 B. W. C. C. 598.

12 Payne v. Fortesque, (1912), 5 B. W. C. C. 634.

13 Mississippi Power Co. v. Industrial Commission, 289 Ill. 353.

asking for a hearing. Until such disputed question arises, the Industrial Commission has no jurisdiction. There is no language to be found in the Act, giving the Commission jurisdiction in any case except where there is a "disputed question of law or fact" between the employer and the employee. There is no presumption of jurisdiction in favor of a body exercising a limited or statutory jurisdiction such as the Industrial Commission, and nothing is taken by intendment in favor of such jurisdiction, but the facts upon which it is founded must clearly appear.[14] Certainly one of the primary purposes of any workmen's compensation law is the encouragement of peaceful settlements, and the prevention of litigation, with all the evils which attend the common law system.[15] These considerations are suggested not alone by the fundamental principles of the workmen's compensation system, but also by the definite provisions of the various compensation laws, including the specific provisions of the Illinois Act, above referred to. The decision of the Illinois Supreme Court in the *Mississippi Power Co.* case is difficult to reconcile either with the spirit or the letter of the law. It puts compensation claims on the same basis as common law claims. Proceedings may be instituted without first giving the employer an opportunity to settle. Mr. Justice Thompson in a dissenting opinion in that case clearly states the prevailing rule, and the reasons for it:

"The Compensation Act clearly contemplates that no proceeding shall be brought before the Industrial Commission except where the parties fail to reach an agreement. In other words, the purpose of the Act is to provide a standard by which the employer and employee can agree on the compensation due. This affords speedy and inexpensive justice for the injured employee, or, in case of the employee's death, for his beneficiaries. The Act specifically provides that no proceeding for com-

[14] Tazewell Coal Co. v. Industrial Commission, 287 Ill. 465.

[15] Victor Chemical Wks. v. Industrial Board, 274 Ill. 11, 13 N. C. C. A. 552; Aurora Brewing Co. v. Industrial Board, 277 Ill. 142, 150, 14 N. C. C. A. 99; 15 *Id.* 802.

pensation under the Act shall be maintained unless a claim for compensation has been made within the time specified. Clearly the purpose of this claim is to afford a basis for discussion so the parties will have an opportunity to agree. If the employee or his representative does not file a claim with the employer, the employer has no opportunity to adjust the loss if so disposed and both parties lose the advantages of the Act. In the instant case no claim whatever was filed with the employer, but, without making any effort to get a settlement, the applicant filed a claim with the Industrial Board more than five months after the accident, and the first notice the employer had of a claim growing out of this accident was when it received notice of the filing of the claim from the Industrial Commission, nearly six months after the accident. In other words, the very purpose of the Act was defeated by the failure to file a claim for compensation with the employer." [16]

It is fortunately the uniform practice in Illinois and elsewhere, before permitting a claim to be filed with the officers who administer the law, to require that the parties make an effort to adjust the claim amicably, without resort to the statutory proceedings provided in cases where such adjustment is not possible.

Payment and receipt of compensation gives the employee the right to apply to the Commission for the adjustment of his claim, where the employer has ceased making payments.[17] And failure on the part of the employer to pay, according to the provisions of the statute is held to amount to a denial of the claim for compensation and gives rise to a question for the determination of the Commission.[18]

§ 209. Agreements. It would seem that a lawful agreement once made, in settlement of a claim for compensation, leaves nothing for the Industrial Commission

[16] 289 Ill. 353.

[17] Simpson Construction Co. v. Industrial Board, 275 Ill. 366, 15 N. C. C. A. 391.

[18] Conway v. Industrial Board, 282 Ill. 313; see also Sellix v. Armour & Co., 162 Pac. (Kan.) 278, 14 N. C. C. A. 96, 433, 778; 15 *Id.* 1032.

to do, assuming that there has been no change in the conditions, giving rise to a review as provided in the Act, and that in such case the Commission would have no jurisdiction, and a party dissatisfied with such an agreement, when lawfully made, could not appeal to the Commission, for compensation covering a claim so settled by agreement. Such agreements, like any other, might be verbal or in writing, or they might be implied from the facts and circumstances in the case. Some statutes provide that agreements shall only be binding when approved by the Commission, or the court, but the only limitations upon the right of private agreements in the Illinois Act are the provisions contained in Section 22 that agreements made within seven days after the injury shall be presumed to be fraudulent, and the provision of Section 23 that the statutory amount cannot be waived. It has been well said by the Supreme Court of Kansas that workmen under the workmen's compensation law should not be regarded in any sense as under guardianship or other disability; that they and their employers are free agents, and such employees may release their employers for liability for injuries in disputed cases on any agreed terms satisfactory to both, and it is there held that mere inadequacy of compensation is not sufficient to vitiate a settlement and release, in the absence of proof of fraud or mutual mistake.[19] By Section 23 of the Illinois Act, however, the employee or his personal representative is forbidden to waive any of the provisions of the Act in regard to the amount of compensation which may be payable, so that inadequacy of compensation alone would be sufficient in Illinois to vitiate a settlement which would otherwise be valid.[20]

Where an agreement is made and approved by the Board, in accordance with the statute, providing for such approval, the agreement has the effect of an award.[21] An agreement upon which a court of com-

[19] Dotson v. Proctor & Gamble Mfg. Co., 169 Pac. (Kan.) 1136.

[20] See discussion of this subject, § 220, *post*.

[21] Aetna Life Ins. Co. v. Shiveley, 121 N. E. (Ind. App.) 50.

petent jurisdiction has entered a judgment, is not reviewable.[22] Such a judgment is in the nature of an execution of the agreement or award.[23] An agreement to pay compensation may be enforceable, although the claim for compensation would be barred by the lapse of time, if such agreement had not been made.[24]

If the Industrial Commission or Board is the only authority authorized to approve agreements, the courts have no jurisdiction to approve a settlement, and such settlement would not be binding;[25] and where the law requires the agreement to be approved by the Board, it is not binding until so approved.[26] Where the agreement is merely that compensation will be paid at a certain rate "during disability," the Board has jurisdiction to determine the rights of the injured man at any time upon application.[27]

Whether or not a lawful agreement in settlement of a compensation claim in accordance with the statute has been made is a question of fact which the Industrial Commission would have power to consider, with other facts, but when a lawful and binding agreement is once proven the application for compensation should be dismissed, the agreement operating as a complete bar to an award, because under the authorities the agreement itself is, in legal effect, an award.[28]

Paragraph (h) of Section 19 of the Illinois Act provides that "an *agreement* or award under this Act, providing for compensation in installments, may at any time within eighteen months after such agreement or award, be reviewed by the Industrial Board, at the request of either the employer or the employee *on the ground that the disability of the employee has subse-*

[22] Bach v. Interurban Railway Co., 174 N. W. (Ia.) 333.

[23] Friedman v. Industrial Commission, 284 Ill. 554, 17 N. C. C. A. 1062.

[24] Crew v. Trainor, 102 Atl. (N. J.) 905; Tribune Co. v. Industrial Commission, 290 Ill. 402.

[25] Industrial Commission v. London G. & A. Co., Ltd., 185 Pac. (Col.) 344.

[26] Jenkins v. T. Hogan & Sons, 163 N. Y. Supp. 707, 15 N. C. C. A. 921.

[27] In re Stone, 117 N. E. (Ind. App.) 669, 16 N. C. C. A. 746.

[28] Aetna Life Ins. Co. v. Shiveley, 121 N. E. (Ind. App.) 50.

quently recurred, increased, diminished or ended," etc. This provision extends the jurisdiction of the Commission to agreements in cases where the disability has "recurred, increased, diminished or ended," and in these cases only has the Commission any power to review a lawful agreement, in accordance with the statute, made between the parties in settlement of a compensation claim.[29]

§ 210. Evidence of settlement and release. Proof of the agreement may be made in the same manner as in other cases, and if the agreement is in writing, it may be made by production of the document and in the first instance, at least, it would be for the Board to determine whether the document produced amounted to a valid and binding agreement. A receipt for compensation does not amount to an estoppel, and the Board would have power to investigate the real facts;[30] although if it amounted to a contract between the parties, the rule that parol contemporaneous evidence is not admissible to vary the terms of a written instrument would apply. As evidence merely of payment or delivery, a receipt is merely *prima facie,* and may be contradicted.[31]

An agreement to release the employer from further liability requires consideration to support it, and the previous payment of compensation, for which the employer was then legally liable is not such consideration.[32]

It has been held that an agreement to release the employer from further liability for compensation, cannot

[29] Tribune Co. v. Industrial Commission, 290 Ill. 402; see also In re McCarthy, 115 N. E. (Mass.) 764, 14 N. C. C. A. 346; Daich v. Studebaker Corp., 161 N. W. (Mich.) 927, 14 N. C. C. A. 131; Porter v. Ritchie, 164 N. W. (Minn.) 581; Gainnotti v. Giusti Bros., 102 Atl. (R. I.) 905, 17 N. C. C. A. 164; Dotson v. Proctor & Gamble Mfg. Co., 169 Pac. (Kan.) 1136, 102 Kan. 248; Simpson Construction Co. v. Industrial Board, 275 Ill. 366, 15 N. C. C. A. 391.

[30] Howell v. Bradford & Co., (1911), 104 L. T. 433, 4 B. W. C. C. 203; MacAndrew v. Gilhooley, (1911), S. C. 448, 4 B. W. C. C. 370.

[31] Needles v. Hanifan, 11 Ill. App. 303, 9 Ill. Notes 155, § 149, 1 Greenleaf Ev. 305.

[32] Hughes v. Vothey Valley Co., (1908), 125 L. T. Newsp. 471, 1 B. W. C. C. 416.

be implied merely from the fact that the injured workman has, after receiving compensation for some time, returned to work without anything being said by him or his employer, as to whether further compensation would be paid.[33]

The voluntary payment by the employer of compensation for a certain period will estop the employer from denying that the employee was entitled to compensation under the Act.[34] And if the release is required by the statute to be filed or recorded, this must be done in order to make the release a bar to a subsequent claim.[35] Also, if the agreement or release must be approved by the Board or the court, this requirement of the statute must be complied with, or they will have no binding effect.[36]

§ 211. Setting agreements aside. As we have already observed, the Board has power to determine whether a valid agreement has been entered into, because it is charged with the duty of arbitrating disputes, "if not settled by agreement," and whether such settlement has been made is therefore a question of fact to be decided by the Board at the threshold of its enquiry. Resort to the courts, would therefore not seem to be necessary to set aside, in the first instance, an agreement which, for any reason, is invalid. The employee would be entitled to ask relief from what purported to be a binding agreement, upon showing that it was obtained from him by fraud, undue influence or other improper conduct tending to prove that it was not in fact his agreement.[37]

An employee signed a release which purported to be in full satisfaction of all claims, past, present and future. It appeared that he signed it in the belief that it was a receipt for payments in arrears. On appeal from an

[33] Williams v. Vauxhall Colliery Co., (1909), 2 K. B. 833, 9 W. C. C. 120.

[34] Summers v. Woodward Wight & Co., 76 So. (La.) 674.

[35] Rodanel v. Carey Salt Co., 165 Pac. (Kan.) 668.

[36] DuPont Powder Co. v. Spocidio, 101 Atl. (N. J.) 407; Jenkins v. T. Hogan & Sons, 163 N. Y. Supp. 707, 15 N. C. C. A. 921.

[37] Fowler v. Hughes, (1903), 5 F. 394; Hawkes v. Coles & Sons, (1910), 3 B. W. C. C. 163; MacAndrew v. Gilhooley, (1911), S. C. 448, 4 B. W. C. C. 370; Ellis v. Lochgelly I. & C. Co., (1909), S. C. 1278, 2 B. W. C. C. 136.

award granting compensation it was argued that the arbitrator was bound to accept the release, until it was duly set aside in an independent action brought for that purpose, but it was held that the question of the sufficiency of the release was a question as to liability to pay compensation, and therefore a proper subject of enquiry by the arbitrator.[38]

Where a workman signed a receipt, not being aware of its terms, and where he signed a final release, thinking that he was merely signing a receipt, it was held under the English law, that there was no binding agreement, such as would bar proceedings for compensation.[39]

It has been said that the settlement agreement contemplated is one intelligently made, with knowledge of all the facts, neither party taking any undue advantage of the other, and if it is not so made it may be set aside for mere inadequacy.[40] And in Kansas it is held that mere failure to read a release, coupled with the fact that the physician told the workman that his injuries were less serious than they proved to be, would not be sufficient to avoid the settlement in the absence of proof of fraud or undue influence, and that the grounds for rescission of a release must be the same that would be sufficient to warrant rescission at common law.[41] But the same court held that where an employee was told by the surgeon who examined him after the accident that no bones in his foot were fractured, and settlement was made on the basis of 50% of his wages for four weeks, and it is afterwards developed that bones were broken, in view of the mistake the release might be set aside.[42] And where an injured person was induced to settle a claim, merely for the temporary compensation payable during the healing period, whereas the injury

[38] Ellis v. Lochgelly I. & C. Co., (1909), S. C. 1278, 2 B. W. C. C. 136.

[39] Brown v. Hunter, (1912), 5 B. W. C. C. 589, 49 Sc. L. R. 695; Fowler v. Hughes, (1903), 5 F. 394; O'Callaghan v. Martin, (1904), 38 Ir. L. T. R. 152.

[40] Weathers v. K. C. Bridge Co., 162 Pac. (Kan.) 957, 99 Kan. 632.

[41] Odrowski v. Swift & Co., 162 Pac. (Kan.) 268, 99 Kan. 163.

[42] Meakins v. K. C. Bridge Co., 162 Pac. (Kan.) 951; see also Weathers v. K. C. Bridge Co., 162 Pac. (Kan.) 957.

actually resulted in a broken arm which at the time of the settlement agreement was unknown to the employee, and was not disclosed by the employer's agent, it was held the agreement might be set aside, as the minds of the parties never met in consummation of a valid contract.[43] And in Indiana where it was held that the insurance carrier was not a necessary party to the settlement agreement, still where such agreement was the result of mistake or fraud or irregularities effecting substantial rights, it was not binding upon the insurance carrier, either before or after its approval, as against a proper proceeding seasonably taken to right the wrong.[44] If after a settlement agreement is made it appears that no accident in fact occurred as claimed, the agreement would not be valid and binding under the compensation law, whatever might be the right of recovery at common law on the agreement as a compromise and settlement of a disputed claim.[45]

An agreement for compensation, made in compliance with the statute and regularly approved has the force and effect of an award and it ought not to be set aside for the mere purpose of permitting the employer to try out the merits of his confession of liability, in the absence of a showing that the disability has diminished or ended.[46] But where the claimant knowingly signs an agreement "in redemption of the liability for all weekly payments now or in the future due me, * * * for all injuries received by me," he is bound by it, and cannot ask to have it reviewed, the conditions remaining unchanged, and there being no fraud or mistake.[47]

§ 212. The arbitrator or committee of arbitration. Paragraph (a) of Section 19 of the Illinois Act provides that "it shall be the duty of the Industrial Commission

[43] Swan v. Lincoln Terminal Co., 170 N. W. (Neb.) 497.

[44] Aetna Life Ins. Co. v. Shiveley, 121 N. E. (Ind. App.) 50.

[45] Burns v. Edison, 105 Atl. (N. J.) 717.

[46] Home Packing & Ice Co. v. Kahill, 123 N. E. (Ind. App.) 415.

[47] In re McCarthy, 115 N. E. (Mass.) 764, 14 N. C. C. A. 346. As to binding effect of agreements, see also Daich v. Studebaker Corp., 161 N. W. (Mich.) 927, 14 N. C. C. A. 131.

upon notification that the parties *have failed to reach an agreement,"* to designate an arbitrator to hear the claim, or that the parties may each select an arbitrator upon a committee of arbitration, the chairman to be selected by the Commission. The arbitrator so designated by the Commission, or the arbitration committee so selected, is the original tribunal established by the Act for the purpose of hearing all questions in dispute between the parties. It is made their duty to hear all the evidence and "make such enquiries and investigations as he or they shall deem necessary" and make a report to the Industrial Commission, in the form of an award if compensation is allowed. It is the duty of the arbitrator or the committee of arbitration to file the decision with the Industrial Commission, and the Commission has power to send the case back to the arbitrator or committee, with directions to make its investigation, hear the evidence and make a finding, in accordance with the statute. Where the arbitrator does not do the work required of him by the statute, it is the duty of the Commission to send the case back with instructions to proceed.[48] It is the duty of the arbitrator to hear and decide questions of fact, when there is evidence before him to pass upon.[49]

Where an employer joins in an arbitration and pays money under an award, it has been held that defenses as to the validity of the claim are waived.[50] If under the practice the claim for compensation may be taken into the courts upon review of arbitration, the claimant is justified in going into court in the first instance where the employer refuses to arbitrate, in the manner provided in the statute.[51] Where the practice provided by the statute is for an appeal from the arbitrators to the Industrial Board or Commission, the courts will not review an award of the arbitrators which has not been appealed to the Board or Commission.[52]

[48] Kerens-Dunnewald Coal Co. v. Industrial Board, 277 Ill. 35, 14 N. C. C. A. 137.

[49] Plass v. Cent. N. E. Ry. Co., 117 N. E. (N. Y.) 952, 11 N. C. C. A. 498; 14 *Id.* 141.

[50] Brown v. George A. Fuller Co., 163 N. W. (Mich.) 492.

[51] Goodwin v. Cudahy Packing Co., 180 Pac. (Kan.) 809.

[52] Victor Chemical Works v. Industrial Board, 274 Ill. 11, 13 N.

§ 213. Review of agreement or award by Industrial Commission. Paragraph (b) of Section 19 provides that the decision of the arbitrator or committee of arbitration shall be filed with the Industrial Commission and that the Commission shall immediately send to each party or his attorney a copy of such decision, together with a notification of the time when it was filed, and unless a petition for review is filed by either party within fifteen days after the receipt by said party of the copy of said decision and notification of time when filed, and unless such party petitioning for a review shall, within twenty days after the receipt by him of the copy of said decision, file with the Commission either an agreed statement of the facts appearing upon the hearing before the arbitrator or committee of arbitration, or, if such party shall so elect, a correct stenographic report of the proceedings at such hearing, then the decision shall become the decision of the Industrial Commission and, in the absence of fraud, shall be conclusive.

Paragraph (e) of the same section provides that if a petition for review and agreed statement of facts or stenographic report is filed, as provided herein, the Industrial Commission shall promptly review the decision of the arbitrator or committee of arbitration and all questions of law or fact which appear from the said statement of facts or stenographic report, and such additional evidence as the parties may submit. After such hearing upon review, the Commission shall file in its office its decision thereon, and shall immediately send to each party or his attorney a copy of such decision and a notification of the time when it was filed.

The obvious purpose of the Illinois Act and others providing a similar method of administration is to discourage litigation. Statistics are available which abundantly prove that on an average, under American Workmen's Compensation Laws, more than 95% of compen-

C. C. A. 552; Aurora Brewing Co. v. Industrial Board, 277 Ill. 142, 150, 14 N. C. C. A. 99; 15 *Id.* 802; Schrewe v. N. Y. Cent. R. Co., 158 N. W. (Mich.) 337; Stacks v. Industrial Commission, 174 Pac. (Col.) 588.

sable injuries are settled by agreement of the parties without even a resort to the original arbitration proceedings provided by the statute. If the parties are not able to agree, however, they are next required to submit their differences to an arbitrator or a committee of arbitration, and such arbitrator or committee, after hearing the evidence, makes an award which, in a goodly number of cases, settles the controversy between the parties and the compensation is paid in accordance with the award. Where either of the parties are dissatisfied, however, they are not yet at liberty to resort to the courts, but must ask for a review of the award of the arbitrator or committee of arbitration by the Industrial Commission; and it then becomes the duty of the Industrial Commission to review the evidence taken upon the original arbitration proceeding and such additional evidence as may be offered by the parties, and file its decision and furnish the parties a copy thereof. If this decision or award of the Commission is acceptable to the parties, compensation must then be paid in accordance with the decision but, if not satisfactory, a resort may then be had to the courts only for the purpose of reviewing questions of law, all questions of fact (except in cases of fraud) being conclusively settled by the decision of the Industrial Commission.

It is, therefore, obvious that it was the deliberate intention of the Legislature to encourage direct agreements and arbitration and to discourage and render difficult a recourse to the common law courts for the adjustment of compensation claims.

It is, therefore, generally held that the Commission or Board authorized to review the hearing of cases should be given an opportunity by the parties to review the findings of its arbitrators or referees or of individual members of such Commission or Board first hearing the case, depending upon the practice under the particular statute, before claimants should be permitted to resort to the courts; and if a claimant fails to ask for such review by the supervising Board or

Commission, his appeal to the courts should be denied.[53]

The filing of a petition for review before the Commission in accordance with the statute is jurisdictional and must be strictly complied with.[54] But the transcript of proceedings before the arbitrator or committee of arbitration need not be certified to at the time of the filing of such transcript, it being sufficient if such transcript is properly certified to prior to the hearing upon review.[55]

It has been held in Indiana that if by mistake the notice of award is not received in time to permit of filing of the petition for review within the prescribed time, it may be filed within a reasonable time after notice is actually received.[56] But it is generally held that the time for petitioning for review, being statutory, must be strictly observed, and the petition filed *in* time, or it will be dismissed.[57] And failure to file the petition for review cannot be waived and jurisdiction conferred by consent.[58] Mailing of a petition to the Commission has been held not to be filing within the terms of the statute.[58a]

In Illinois it has been held that the record need not show that the decision of the arbitrator was actually received by the parties to the proceeding in order to give the Commission jurisdiction.[59]

[53] Victor Chemical Works v. Industrial Board, 274 Ill. 11, 13 N. C. C. A. 552; 14 *Id.* 126; Aurora Brewing Co. v. Industrial Board, 277 Ill. 142, 150, 14 N. C. C. A. 99; 15 *Id.* 802; Passini v. Industrial Commission, 171 Pac. (Colo.) 369; Schrewe v. New York Central R. Co., 158 N. W. (Mich.) 337.

[54] Kalucki v. American Car & Foundry Co., 166 N. W. (Mich.) 1011, 17 N. C. C. A. 162.

[55] Bloomington D. & C. R. Co. v. Industrial Board, 276 Ill. 454, 13 N. C. C. A. 490; 14 *Id.* 140, 427; 15 *Id.* 386, 391; Ill. Midland Coal Co. v. Industrial Board, 277 Ill. 333, 16 N. C. C. A. 810.

[56] In re Ale et al., 117 N. E. (Ind. App.) 938, 16 N. C. C. A. 812.

[57] Bloomington D. & C. R. Co. v. Industrial Board, 276 Ill. 454; Kokomo Steel & Wire Co. v. Griswold, 117 N. E. (Ind. App.) 265; Burnette v. Quincy Mining Co., 163 N. W. (Mich.) 1013, 16 N. C. C. A. 743.

[58] Jefferson Hotel Co. v. Young, 121 N. E. (Ind. App.) 94; In re Levangie, 117 N. E. (Mass.) 200, 16 N. C. C. A. 744; 17 *Id.* 163.

[58a] In re Gorski, 116 N. E. (Mass.) 811, 16 N. C. C. A. 216, 809.

[59] American Milling Co. v. Industrial Board, 279 Ill. 560, 16 N. C. C. A. 86.

Notice must be given to the parties of the hearing upon review before the Commission.[60] Upon such review the Commission cannot appoint an investigator to go outside and take evidence, with no opportunity to cross-examine him, and base its decision or award upon the report of such investigator.[61]

Service of notice of the proceedings for review by the Commission should be shown by some other means than a mere recital in the decision of the Commission.[62]

All questions of fact, or mixed questions of law and fact, must be raised upon the hearing before the Commission or the arbitrators and, if not so raised, cannot afterwards be urged in the courts.[63] For example, the defense of a six months' limitation cannot first be raised upon review before the Commission.[64]

Failure to raise questions of law affecting the jurisdiction of the Commission, however, will not be held to waive them, providing such questions constitute an essential part of the claimant's case.[65]

It is the duty of the Industrial Commission to find the facts upon which an award for compensation is based and not merely to state its conclusions from the evidence produced. For example, a finding that the injured man "is now totally disabled" is not sufficient to sustain an order for compensation for total disability.[66]

Under the provisions of the Compensation Act, the decision of the Industrial Commission is conclusive as to all questions of fact, except in cases of fraud; and the Commission has no power to review an award pre-

[60] Bereda v. Industrial Board, 275 Ill. 514, 16 N. C. C. A. 750.

[61] Bereda v. Industrial Board, 275 Ill. 514, 16 N. C. C. A. 750; Ruda v. Industrial Board, 283 Ill. 550, 16 N. C. C. A. 751.

[62] Forschner v. Industrial Board, 278 Ill. 102.

[63] Victor Chemical Works v. Industrial Board, 274 Ill. 11, 13 N. C. C. A. 552; 14 *Id.* 126, 777; Aurora Brewing Co. v. Industrial Board, 277 Ill. 142, 150, 14 N. C. C. A. 99; 15 *Id.* 802.

[64] U. S. Fidelity & Guaranty Co. v. Pillsbury, 162 Pac. (Cal.) 638, 14 N. C. C. A. 786; American Milling Co. v. Industrial Board, 279 Ill. 560, 16 N. C. C. A. 86.

[65] Bushnell v. Industrial Board, 276 Ill. 262, 14 N. C. C. A. 654, 772; Prokopiak v. Buffalo Gas Co., 162 N. Y. S. 288, 14 N. C. C. A. 128, 665.

[66] Ill. Midland Coal Co. v. Industrial Board, 277 Ill. 333, 16 N. C. C. A. 810.

viously made by it, unless the statute specifically so provides.[67]

The fact that there is some legal evidence to sustain the issue on the part of the claimant is not sufficient to justify an award by the Commission unless the greater weight of all the evidence is in his favor, for the burden of proof is on the claimant and it is the duty of the Commission to consider and weigh all the evidence produced and render their decision in accordance with the preponderance of the evidence.[68]

The Supreme Court of Pennsylvania has said that in view of the provision giving arbitrators and the Commission final and exclusive jurisdiction of questions of fact, such arbitrators and Commissions must realize the great responsibility imposed upon them by the statute.[69] The Commission not only have the right but it is their duty to modify an unjust award made under a mistake of fact, even though the time for filing a petition for review has expired.[70]

When the decision of the Commission has been reached it should be filed and a copy furnished to both parties; and it has been held that the sending of such copy by mail or messenger is a sufficient discharge of the duty of the Commission to send to each party a copy of its decision.[71]

§ 214. Decision of two members of Commission sufficient. Subdivision (f) of Section 19 of the act provides that "the decision of any two members of a committee of arbitration, or of the Industrial Commission, shall be considered the decision of such committee or board, respectively." Any doubts as to the intention of the legislature with reference to a decision by a majority

67 Friedman v. Industrial Commission, 284 Ill. 554, 17 N. C. C. A. 1062; Kingan & Co., Ltd. v. Buford et al., 116 N. E. (Ind. App.) 753.

68 Hafer v. Industrial Com., 293 Ill. 425; Halsted v. Industrial Commission, 287 Ill. 509; Lefens v. Industrial Commission, 286 Ill. 32.

69 Poluskiewicz v. Philadelphia Reading Coal & Iron Co., 101 Atl. (Pa.) 638.

70 Kriegbaum v. Buffalo Wire Works Co., 169 N. Y. S. 307, 16 N. C. C. A. 353; see, however, Georgia Casualty Co. v. Industrial Accident Commission, 165 Pac. (Cal.) 704.

71 Jefferson Hotel Co. v. Young, 121 N. E. (Ind. App.) 94.

of the members of the arbitration committees or the Industrial Commission are removed by this express provision, although it may not have been essential to insert this clause in view of the provision of the statute of 1874 with reference to the construction of statutes.[72] This provision is:

"Ninth: Words purporting to give a joint authority to three or more public officers or other persons shall be construed as giving such authority to a majority of such officers or persons."

The general rule, in the absence of statutory provisions of this kind, is that under a submission of matters in dispute to arbitrators, their award must be unanimous, unless otherwise agreed.[73]

§ 215. Review by the Circuit Court. The right under the Illinois Act to review questions of law in the Circuit Court is governed by the following provisions of the statute:

"(f) The decision of the Industrial Commission, acting within its powers, according to the provisions of Paragraph (e) of this section shall, in the absence of fraud, be conclusive, unless reviewed as in this paragraph hereinafter provided.

(1) The Circuit Court of the county where any of the parties defendant may be found shall by writ of *certiorari* to the Industrial Commission have power to review all questions of law presented by such record, except such as arise in a proceeding in which under Paragraph (b) of this section a decision of the arbitrator or committee of arbitration has become the decision of the Industrial Commission. Such writ shall be issued by the clerk of such court upon *praecipe*. Service upon any member of the Industrial Commission or the secretary thereof shall be service on the Commission and service upon other parties interested shall be by *scire facias*, or service may be made upon said Commission

[72] Hurd's Rev. Stat., Chap. 131, § 1, Ninth; Root Dry Goods Co. v. Gibson, 123 N. E. (Ind. App.) 134.

[73] Stose v. Heissler, 120 Ill. 443, 6 Ill. Notes 75, § 267; Ryan v. Chicago Foundry Co., 200 Ill. App. 45.

and other parties in interest by mailing notice of the commencement of the proceedings and the return day of the writ to the office of said Commission and the last known place of residence of the other parties in interest at least ten days before the return day of said writ. Such suit by writ of *certiorari* shall be commenced within twenty days of the receipt of notice of the decision of the Commission.

The Industrial Commission shall not be required to certify the record of their proceedings to the Circuit Court, unless the party commencing the proceedings for review in the Circuit Court, as above provided, shall pay to the Commission the sum of five cents per one hundred words of testimony taken before said Commission and three cents per one hundred words of all other matters contained in such record.

(2) No such writ of *certiorari* shall issue unless the one against whom the Industrial Commission shall have rendered an award for the payment of money shall upon the filing of his *praecipe* for such writ filed with the clerk of said court a bond conditioned that if he shall not successfully prosecute said writ, he will pay the said award, and the costs of the proceedings in said court. The amount of the bond shall be fixed by any member of the Industrial Commission and the surety or sureties on said bond shall be approved by the clerk of said court.

The court may confirm or set aside the decision of the Industrial Commission. If the decision is set aside and the facts found in the proceedings before the Commission are sufficient, the court may enter such decision as is justified by law, or may remand the cause to the Industrial Commission for further proceedings, and may state the questions requiring further hearing, and give such other instructions as may be proper.'' [74]

After an award becomes final by reason of failure to proceed to review it in the courts in accordance with the statute, the right to so review the award in the

[74] § 19 of the Act.

courts is lost.[75] *Certiorari* is the only method provided by the statute for review in the Circuit Court, and the statutory procedure must be strictly followed;[76] and any amendment to the Act changing the manner of prosecuting a review in the courts applies to cases pending at the time of such amendment.[77]

The proceedings in *certiorari* may be instituted in the Circuit Court of the County where "any of the parties defendant may be found." If instituted in the wrong county, the cause may be transferred by change of venue to the property county.[78] The Industrial Commission is not a party in interest within the meaning of the statute so as to be included among the defendants whose places of residence determines the county where the writ of *certiorari* may issue, and such cases may not be reviewed, therefore, by the Circuit Court of the county where members of the Industrial Commission may be found, unless the employee or employer (the real party defendant) also may be found within that county.[79]

A *praecipe* in due form is necessary in a *certiorari* proceeding in order to give the Circuit Court jurisdiction.[80]

The proceedings in *certiorari* must be filed in the Circuit Court within the time fixed by the statute or the right of review in the courts will be lost, although it may appear from the record that the Commission acted without jurisdiction.[81]

The proceeding being purely statutory, the right to a review in the courts is lost unless it is exercised in strict accordance with the provisions of the statute;[82] and

[75] Friedman Mfg. Co. v. Industrial Commission, 284 Ill. 554, 17 N. C. C. A. 1062.

[76] Smith-Lohr Coal Co. v. Industrial Board, 279 Ill. 88; Central Ill. Service Co. v. Industrial Com., 293 Ill. 62.

[77] People v. McGoorty, 270 Ill. 618, 10 N. C. C. A. 978.

[78] Central Ill. Service Co. v. Industrial Com., 293 Ill. 62.

[79] Arcade Mfg. Co. v. Industrial Board, 282 Ill. 27, 16 N. C. C. A. 816; L. & N. R. R. Co. v. Industrial Board, 282 Ill. 136, 16 N. C. C. A. 816.

[80] Smith-Lohr Coal Mining Co. v. Industrial Board, 279 Ill. 88; L. & N. R. R. Co. v. Industrial Board, 282 Ill. 136, 16 N. C. C. A. 816.

[81] North Pacific S. S. Co. v. Industrial Acc. Com., 168 Pac. (Cal.) 30, 13 N. C. C. A. 798.

[82] Enneberg v. State Industrial

delay in instituting such proceedings cannot be waived by agreement, as the requirements of the statute as to the time and manner of instituting the review proceedings are jurisdictional;[83] and an order authorizing a review *nunc pro tunc* cannot be entered in the absence of an express provision of the statute to that effect, it being held that such action would result in wiping out the express limitation of the statute.[84]

An award is not open to review in the courts except in the manner pointed out in the statute and is, therefore, not open to collateral attack on the ground of want of jurisdiction of the subject matter.[85]

It will be noted that the statute provides that the decision of the Industrial Commission, "acting within its powers," is, in the absence of fraud, conclusive. It is, therefore, proper for the court to inquire as to whether the Commission has acted within its powers in reaching its decision.[86]

It has already been pointed out that the decision of the Commission on questions of fact is final if it acts within its powers.[87]

The court is bound to accept as true the facts as found by the Industrial Commission, unless the evidence is of such a conclusive character as to force a contrary conclusion. The court, in order to reach a contrary conclusion, may not weigh the evidence nor disregard any reasonable inference which the Commission may have drawn from the facts.[88] The decision of the Commission is

Acc. Com., 171 Pac. (Ore.) 765; Neal v. Industrial Acc. Com., 171 Pac. (Cal.) 696.

[83] Humphrey v. Employers Liability Assurance Corp., 115 N. E. (Mass.) 253, 12 N. C. C. A. 392; 14 *Id.* 90.

[84] Wise v. Borough of Cambridge Springs, 104 Atl. (Pa.) 863.

[85] Thaxter v. Finn, 173 Pac. (Cal.) 163.

[86] Thede Bros. v. Industrial Commission, 285 Ill. 483; Borgins v. Falk Co., 147 Wis. 327, 2 N. C. C. A. 834.

[87] Parker-Washington Co. v. Industrial Board, 274 Ill. 498, 14 N. C. C. A. 127, 653, 1079; Munn v. Industrial Board, 274 Ill. 70, 12 N. C. C. A. 652; Victor Chemical Works v. Industrial Board, 274 Ill. 11, 13 N. C. C. A. 552; 14 *Id.* 126; Sulzberger & Sons Co. v. Industrial Commission, 285 Ill. 223, 17 N. C. C. A. 92.

[88] Swing v. Kokomo Steel & Iron Co., 125 N. E. (Ind. App.) 471.

conclusive in such cases,[89] even though the reviewing court itself disbelieves the testimony of the witnesses.

And it has been held that the decision of the Commission or arbitrator is conclusive, although the evidence, contrary to the award, is practically uncontradicted;[90] but the evidence offered in support of such an award must be "legal evidence," and whether it is or not is a question of law reviewable by the court;[91] but where there is such evidence, the courts have no jurisdiction to review questions of fact.[92]

The Illinois Workmen's Compensation Act is similar in principle to the Wisconsin Act of 1911. The Wisconsin Act received the consideration of the Supreme Court of that State,[93] and was declared to be valid in general. The court held that the board charged with the duty of carrying into effect the provisions of the Act was an administrative board, and could be vested with no judicial powers and could not finally pass on its own jurisdiction. The court say:

"While acting within the scope of its duty or its jurisdiction, as it is sometimes called, such a board may lawfully be endowed with very broad powers, and its conclusions may be given great dignity and force, so that courts may not reverse them, unless the proof be clear and satisfactory that they are wrong. * * * Not only this, but many such boards are created, whose decisions of fact, honestly made, within their jurisdiction, are not subject to review in any proceeding. * * * It is important to notice the limitation contained in the last sentence: The decision of such a board may be made conclusive when the board is acting within its jurisdiction, not otherwise. Hence, the question of its jurisdiction is one always open to the courts for review;

89 Benjamin v. Rosenberg Bros., 167 N. Y. S. 650.

90 Jewell Tea Co. v. Weber, 103 Atl. (Md.) 476, 17 N. C. C. A. 252; Coastwise Ship Building Co. v. Tolson, 103 Atl. (Md.) 478, 17 N. C. C. A. 252.

91 Parker-Washington Co. v. Industrial Board, 274 Ill. 498, 14 N. C. C. A. 127, 653, 1079; Goelitz v. Industrial Board, 278 Ill. 164.

92 Waterman v. Riehl, 117 N. E. (Ind. App.) 272.

93 Borgnis v. Falk Co., 147 Wis. 327, 2 N. C. C. A. 834.

it cannot itself conclusively settle this question and thus endow itself with power. If no appeal from its conclusions be provided, the question whether it has acted within, or exceeded, its jurisdiction is always open to the examination and decision of the proper court by writ of *certiorari.*"

The Wisconsin statute provided for the review of jurisdictional questions in the first instance, by the Circuit Court of Dane county with an appeal to the Supreme Court. It will thus be seen from the decision of the Wisconsin court, and such decision is in harmony with the general principles of constitutional law repeatedly recognized in this and other jurisdictions, that, in order to be valid, this statute must allow a judicial review of the jurisdictional questions which are (1) whether or not both employer and employee are covered by the terms of the Act, and (2) whether or not the injury was suffered by the employee in the course of his employment, and (3) whether a binding and valid agreement in settlement of the compensation claim has been made. The Industrial Commission cannot conclusively determine its own jurisdiction as to these questions and oust the courts of all right to review such questions.

The question as to whether the Commission, in making its award, was "acting within its powers" frequently arises in cases where the Commission in its decision has applied the law to cases or persons not properly within its terms. For example, where it has held that under a certain state of facts the accident arose out of and in the course of the employment. For the purpose of determining jurisdictional questions of this character, the court may review the evidence certified in the record to determine the question of jurisdiction, and if the court is of the opinion that the Commission has applied the law to cases or persons not subject to it, the award may be set aside.[94]

[94] Thede Bros. v. Industrial Commission, 285 Ill. 483; Forschner v. Industrial Board, 278 Ill. 99, 103, 14 N. C. C. A. 92, 348; Paul v. Industrial Commission, 288 Ill. 532; Goelitz v. Industrial Board, 278 Ill. 164; International Harvester Co. v.

It has been said that while the courts will not disturb an award because of insufficient evidence where the evidence is conflicting and there is competent evidence tending to sustain the decision, the legal conclusions of the Commission not based on any evidence are not binding on the courts and will not be sustained;[95] and whether there is any evidence tending to prove that the accident arose out of and in the course of employment is a question of law within the jurisdiction of the courts.[96]

It has been said that the only circumstances under which the court can review the facts is when a finding of facts is challenged as a matter of law as not being supported by any evidence.[97] For example, whether an employee is an independent contractor or not is a question of law for the courts.[98] And whether a woman is a "widow" of a lawful common law marriage is a question of law.[99]

The Circuit Court, in the *certiorari* proceeding, may confirm or set aside the decision of the arbitrators or the Industrial Commission. If the decision is set aside and the facts found in the proceedings before the Commission are sufficient, the court may enter such decision as is justified by law, or may remand the case to the Industrial Commission for further proceedings, and may state the questions requiring further hearing and give such other instructions as may be proper.[1]

The court has only such power on *certiorari* as the statute gives it and that is to confirm or set aside the decision of the Industrial Commission. There is nothing in the statute to authorize a judgment directing the payment of the amount of the award and ordering exe-

(Wis.) 53, 157 Wis. 167, 11 N. C. C. A. 435.

[95] Bradley Mfg. Works v. Industrial Board, 283 Ill. 468.

[96] Northern Ill. L. & T. Co. v. Industrial Board, 279 Ill. 565, 15 N. C. C. A. 158.

[97] Big Muddy C. & I. Co. v. Industrial Board, 279 Ill. 235; Dunnewald v. Henry Steers, Inc., 99 Atl. (N. J.) 345, 14 N. C. C. A. 103.

[98] Columbia School Supply Co. v. Lewis, 115 N. E. (Ind. App.) 103, 14 N. C. C. A. 132, 136; 15 *Id.* 486.

[99] Ziegler v. P. Cassidy's Sons, 220 N. Y. 98.

[1] People v. McGoorty, 270 Ill. 618, 10 N. C. C. A. 978.

cution to issue in such *certiorari* proceedings. The bond which the employer is required to furnish under the statute, if he asks for a review by *certiorari,* is a sufficient protection and is all that the statute requires in the way of security for the payment of compensation.[2]

Where the question is merely the amount of the award, there can be no review by the courts in the absence of some showing of abuse of discretion.[3]

Upon review by the courts, questions of jurisdiction of the Industrial Commission will not be held to be waived by reason of failure to raise such questions upon the hearing before the Commission or the arbitrator.[4]

Jurisdictional questions of fact may be reviewed by the courts; that is, where the question is whether jurisdictional facts were or were not proved, the record must show facts giving the inferior tribunal jurisdiction and this evidence may properly be reviewed in the courts by *certiorari;*[5] and mixed questions of law and fact of a jurisdictional nature may be reviewed by the courts.[6]

Questions of law can be raised for the first time in the courts, as the Industrial Commission and its arbitrators have no judicial functions.[7]

Where the decision of an arbitrator has become the decision of the Industrial Commission because no application is made for review before the Commission, it was formerly held that the Circuit Court had jurisdiction to review the record of the proceedings in the same manner

[2] Baum v. Industrial Commission, 288 Ill. 516.

[3] Scully v. Industrial Commission, 284 Ill. 567, 17 N. C. C. A. 949; Chalmers v. Industrial Insurance Commission, 162 Pac. (Wash.) 576, 14 N. C. C. A. 97; 15 *Id.* 399; see, however, Rakiec v. D. L. & W. R. Co., 88 Atl. (N. J.) 953, 4 N. C. C. A. 734, where it was held that the question of the amount of compensation involved a construction of the statute and was, therefore, one of law for the courts.

[4] Bushnell v. Industrial Board, 276 Ill. 262, 14 N. C. C. A. 654, 772; Prokopiak v. Buffalo Gas Co., 162 N. Y. S. 288, 14 N. C. C. A. 128, 665.

[5] Hahnemann Hospital v. Industrial Board, 282 Ill. 316, 16 N. C. C. A. 666, 681, 746.

[6] *Ibid.*

[7] Savoy Hotel Co. v. Industrial Board, 279 Ill. 329, 16 N. C. C. A. 746; 17 *Id.* 251.

as if a review had also been had in the regular way by the Industrial Commission;[8] and if there is any competent evidence to sustain the award, the court must uphold it, although the preponderance of the evidence is against it.[9]

The fraud referred to in the statute, which constitutes the only exception to the conclusive character of the Commission's award, must be proved in accordance with the rules of law for establishing it.[10]

It must be presumed that the evidence heard by the Commission was sufficient to sustain the Commission's findings in the absence of a transcript of the proceedings provided for in the Act, and a party who wishes to question the sufficiency of the findings of the Commission must bring up the record to show such insufficiency;[11] and where the record shows that evidence in addition to that contained in the stenographic report of the evidence taken before the arbitrator was heard before the Industrial Commission, it will be presumed that such additional evidence was sufficient to sustain the finding of the Commission, if there is nothing to show what the additional evidence was.[12]

A motion to quash the writ of *certiorari* in the Circuit Court is a proper procedure, but when made it must be supported by a showing that the facts recited in the motion are true.[13]

§ 216. Review by the Supreme Court. Judgments and orders of the Circuit Court in compensation cases may be reviewed in the Supreme Court by writ of error, in the discretion of the Supreme Court. The writ of error in such cases is not a writ of right. The statute provides as follows: "Judgments and orders of the

[8] Jakub v. Industrial Commission, 288 Ill. 87; but under amended Section 19 (f) no review of the award of an arbitrator may be had in the Circuit Court unless review is first had before the Industrial Commission.

[9] Pekin Cooperage Co. v. Industrial Commission, 285 Ill. 31, 17 N. C. C. A. 962; Western Electric Co. v. Industrial Commission, 285 Ill. 279; see also Borck v. Simon J. Murphy Co., 171 N. W. (Mich.) 470.

[10] Roper v. Hammer, 187 Pac. (Kas.) 858.

[11] Bradley Mfg. Works v. Industrial Board, 283 Ill. 468, 17 N. C. C. A. 250.

[12] Smith-Lohr Coal Co. v. Industrial Board, 279 Ill. 88.

[13] Fruit v. Industrial Board, 284 Ill. 154, 16 N. C. C. A. 685.

Circuit Court under this Act shall be reviewed only by the Supreme Court upon a writ of error which the Supreme Court in its discretion may order to issue, if applied for not later than the second day of the first term of the Supreme Court following the rendition of the Circuit Court judgment or order sought to be reviewed, provided that if the first day of said term is less than thirty days from the rendition of said judgment or order, then application for said writ of error may be made not later than the second day of the second term following the rendition of said judgment or order. The writ of error when issued shall operate as a *supersedeas*. The bond filed with the *praecipe* for the writ of *certiorari* as provided in this paragraph shall operate as a stay of the judgment or order of the Circuit Court until the time shall have passed within which an application for a writ of error can be made, and until the Supreme Court has acted upon the application for a writ of error, if such application is made."[14]

Inasmuch as both the Circuit and Supreme Courts are authorized under the statute to review questions of law only, many of the principles discussed, and cases cited in connection with the discussion of the jurisdiction and powers of the Circuit Court are applicable in considering the jurisdiction and powers of the Supreme Court.[15]

If there is any direct evidence, or any evidence from which a legitimate inference may be drawn, to sustain the award, the Supreme Court is not justified in setting it aside, although it may feel that the preponderance of the evidence is against it.[16]

While the Industrial Commission's findings of fact are conclusive on the Supreme Court, the legal conclusions of the Commission based upon such findings are

14 § 19 of the Act.

15 See § 215, *ante;* see also as to questions of practice and procedure, § 250, *et seq., post.*

16 Pekin Cooperage Co. v. Industrial Commission, 285 Ill. 31, 17 N. C. C. A. 962; Western Electric Co. v. Industrial Commission, 285 Ill. 279; Dragovitch v. Iroquois Iron Co., 269 Ill. 478, 14 N. C. C. A. 427; Ohio Bldg. Vault Co. v. Industrial Board, 277 Ill. 96, 111, 14 N. C. C. A. 99, 425, 430; see also cases cited, § 252, *post.*

subject to review.[17] And in determining whether there is any competent evidence tending to support the award, the Supreme Court is not bound by the facts stated in the written decision of the Industrial Commission, where there is a stenographic report of the evidence in the record.[18] One who wishes to question the sufficiency of the findings of the Industrial Commission or the Circuit Court must bring the record to the Supreme Court to show such insufficiency.[19]

Questions of constitutionality must appear to have been presented to the Circuit Court or the Supreme Court will not consider them. Such questions cannot be raised for the first time in the Supreme Court.[20]

The order of the Circuit Court quashing the entire record of the Industrial Commission is a final, appealable order, but where the order of the Circuit Court in effect sustains objections to the competency of the evidence offered to support an award, and remands the case for further proceedings before the Industrial Commission, the order is not a final judgment, although it recites that the record is quashed.[20a]

The Supreme Court is authorized to make rules, not inconsistent with the provisions of the statute, regulating the application for writs of error to review the judgments and orders of the Circuit Court, and the manner of prosecuting such writs of error in the Supreme Court.

§ 217. Review by Commission because of changed conditions. The provisions of Paragraph (h) of Section 19 of the Illinois Act are as follows: "An agreement or award under this Act, providing for compensation in

[17] International Harvester Co. v. Industrial Board, 282 Ill. 489, 16 N. C. C. A. 911; Bradley Mfg. Wks. v. Industrial Board, 283 Ill. 468, 17 N. C. C. A. 250.

[18] Western Electric Co. v. Industrial Commission, 285 Ill. 279.

[19] Bradley Mfg. Wks. v. Industrial Board, 283 Ill. 468, 17 N. C. C. A. 250.

[20] Savoy Hotel Co. v. Industrial Board, 279 Ill. 329, 16 N. C. C. A. 746; 17 *Id.* 251.

[20a] Peabody Coal Co. v. Industrial Commission, 287 Ill. 407. Note: Method of review by the Supreme Court provided in the Illinois Act of 1913 held unconstitutional in Courter v. Simpson Const. Co., 264 Ill. 488, 6 N. C. C. A. 548.

installments, may at any time within eighteen months after such agreement or award be reviewed by the Industrial Commission at the request of either the employer or the employee, on the ground that the disability of the employee has subsequently recurred, increased, diminished or ended, and upon such review compensation payments may be re-established, increased, diminished or ended," etc.[21]

Conditions remaining the same as when the agreement or award was made, neither the workman nor the employer under the Illinois Act could ask for a review under this paragraph, because he is only permitted *to* apply on the ground that the disability "has subsequently recurred, increased, diminished or ended."[22] Therefore upon petition for review under this paragraph the evidence must be limited to the sole question as to whether or not the disability has recurred, increased, diminished or ended, within the period of eighteen months from the date of the original agreement or award.[23] It therefore follows that under this provision the power of the Industrial Commission is limited in its exercise to a consideration of such facts only as have arisen since the making of the original agreement or award.[24] So far as this proceeding is concerned, an agreement made by the parties and approved by the Industrial Commission has the full force and effect of an award.[25] And this paragraph of the Act applies, although the agreement or award provides for but one payment of compensation.[26] And either party may peti-

[21] See Safety Insulated Wire & Cable Co. v. Court, 100 Atl. (N. J.) 846, 14 N. C. C. A. 129; 15 *Id.* 390; Kauffman v. Industrial Accident Commission, 174 Pac. (Cal.) 690.

[22] Carson-Payson Co. v. Industrial Commission, 285 Ill. 635.

[23] Bloomington D. & C. R. R. Co. v. Industrial Board, 276 Ill. 120, 13 N. C. C. A. 490; 14 *Id.* 140; 15 *Id.* 386; Casparis Stone Co. v. Industrial Board, 278 Ill. 77, 15 N. C. C. A. 388, 390; City of Pana v. Industrial Board, 279 Ill. 279, 16 N. C. C. A. 813; Simpson Construction Co. v. Industrial Board, 275 Ill. 366, 15 N. C. C. A. 391.

[24] Georgia Casualty Co. v. Industrial Accident Commission, 170 Pac. (Cal.) 625.

[25] Pedlow v. Swartz Electric Co., 120 N. E. (Ind. App.) 603.

[26] Arnold & Murdock Co. v. Industrial Board, 277 Ill. 295, 15 N. C. C. A. 383.

tion for review although a lump sum award has been previously made.[27] And the right to review has been held to exist although a voluntary agreement was made where the right to claim compensation was barred by lapse of time.[28] And the right is not suspended nor held in abeyance by proceedings by writ of error in the Supreme Court, and the limitation of time within which the review may be had begins to run from the time of the award and continues to run, regardless of proceedings by writ of error to review questions of law.[29]

Voluntary payments by the employer and acceptance of the payments by the employee constitute such an agreement for compensation as is referred to in this paragraph, giving a right of review on account of changed conditions,[30] and such petition may be filed notwithstanding the application for adjustment of claim has been denied by the arbitrator.[31] Appearance by the employer and participation in the proceedings before the Industrial Commission, waives any right to notice, and unless the question of such notice is raised before the Commission it cannot be raised in the Supreme Court. The question as to whether the employee is suffering from a continuance of the disability instead of a recurrence is also waived.[32]

Section 24 of the Act, in regard to notice, does not apply to proceedings for review under this paragraph, and therefore no written notice of claim as provided in Section 24 is required under this paragraph.[33]

As to the proper scope of the enquiry under a petition for review on account of changed conditions, the Supreme Court of Illinois has said: "Upon a review

[27] Peoria Ry. Co. v. Industrial Commission, 290 Ill. 177; Tribune Co. v. Industrial Commission, 290 Ill. 402.

[28] Tribune Co. v. Industrial Commission, 290 Ill. 402.

[29] Big Muddy Coal & Iron Co. v. Industrial Commission, 289 Ill. 515.

[30] Carson-Payson Co. v. Industrial Commission, 285 Ill. 635.

[31] *Ibid.* See also effect of voluntary payments made during a portion of the period of disability. State v. Nye, 161 N. W. (Minn.) 224.

[32] Meyer v. Industrial Commission, 286 Ill. 642.

[33] Arnold & Murdock Co. v. Industrial Board, 277 Ill. 295, 15 N. C. C. A. 383.

under said Paragraph (h) the parties are bound by the proof made as to the injuries received and the disability which ensued on the hearing which resulted in making the award. It would not be proper upon such review to again go into the facts as to the injury and the disability which ensued, as those matters have been finally adjudicated. The board must consider the proof made on review as to whether the disability resulting from the injury has recurred, increased, diminished or ended, in connection with the proof made at the time the award was made. Section 16 of the Act requires the board, at its own expense, to provide a stenographer to take the testimony and record all proceedings at the hearing before an arbitrator or committee of arbitration, and requires such stenographer to furnish a transcript of such testimony or proceedings to any person requesting it, upon payment to the stenographer of five cents per hundred words for the original, and three cents per hundred words for each copy. A review of the award of the committee of arbitration could not properly be had without the board having before it an agreed statement of the facts proven on the original hearing or an authenticated report of the evidence, and it devolved upon Parks to introduce such statement or report in evidence on this hearing before the Industrial Board."[34]

The English Act provides[35] "any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished or increased, subject to the maximum above provided," etc.

In a case arising under the English Act, the workman applied for a review, but it appeared that the degree of incapacity remained exactly the same as when the agreement for partial compensation was made. It was contended that because the workman was not able to obtain light work, he was entitled to a review, but it was held

[34] Squire Dingee Co. v. Industrial Board, 281 Ill. 359, 15 N. C. C. A. 399.

[35] 6 Edw. VII, Chap. 58, Schedule 1, (16).

that there being no change in his condition, he was bound by the agreement.[36]

It has been held, however, where there is evidence of a change of circumstances, so that a workman who has repeatedly applied for work, but has been unable to obtain it because of his physical condition, resulting from the accident, an application for review should be entertained.[37] Mere fluctuations in the general labor market, however, are not sufficient to justify a review.[38] A workman was injured, and an award made in his favor for 15s a week. No compensation was paid under this award, as the employers took the man back at his former wages. After some months he was dismissed, and compensation was then paid for six months. The employers applied to have the amount of the weekly payments reduced, and the County Court Judge reduced the amount to 1s a week, holding that the man's chances of employment were somewhat reduced. Four months later the workman applied to increase the payments on the ground that, although his finger was in the same condition as at the date of the last review, the fact that he made several applications for work which had been refused on account of his condition, showed that his earning capacity was in fact reduced as a result of the accident. The employers contended that the question of his capacity was *res judicata,* but the County Court Judge overruled this contention, and awarded 15s a week compensation. It was held by the Court of Appeal that the question of the workman's capacity at the date of application for review, was not decided by a finding as to his condition at a previous date, and that the award was proper.[39]

In those cases in which the physical condition of the

[36] Boag v. Lockwood Collieries Co., (1910), S. C. 51, 3 B. W. C. C. 549.

[37] Sharman v. Holliday, (1904), 1 K. B. 235, 6 W. C. C. 147.

[38] Radcliffe v. Pac. Steam Nav. Co., (1910), 1 K. B. 685, 3 B. W. C. C. 185; Ambridge v. Good, (1912), 5 B. W. C. C. 691.

[39] Radcliffe v. Pac. Steam Nav. Co., (1910), 1 K. B. 685, 3 B. W. C. C. 185. To the same effect, see McDonald v. Wilson's & Clyde's Coal Co., (1912), A. C. 513, 5 B. W. C. C. 478; Walton v. South Kirby, etc., Co., (1912), 5 B. W. C. C. 640.

workman and his capacity for work are not capable of definite and final settlement, and can only be conclusively determined by experiment and continued treatment, an agreement or award should not be held to operate as an estoppel to a subsequent review.[40]

As illustrating such a change of circumstances as will be considered under the English Act, upon application for review: A workman was in receipt of 17s 5d a week, compensation. His employers then gave him light work at Cardiff, some miles from his home, and filed an application for review. The County Court Judge reduced the payments to 13s a week. In arriving at this figure, he allowed the man 4s and 6d for a week-end ticket, and lodging allowance, as he had to live apart from his family during the week. The family then came to live in Cardiff, and the employers filed a further application to reduce the compensation, on the ground of this change of circumstances. The Judge then reduced the payments by a further 2s, and the Court of Appeal held that the decision was on a question of fact, and it would not interfere.[41]

The question as to whether the disability has recurred or increased is one of fact for the determination of the Industrial Commission upon consideration of the stenographic report of the original hearing and the additional evidence with respect to the increase or recurrence of the disability, and if the finding of the Commission is based upon competent evidence such finding is conclusive upon the courts.[42]

The original award stands as an adjudication upon all matters in dispute up to the time such award was made, and neither party may thereafter be heard to say that such award was wrong in any respect, nor in any subsequent hearing is it proper to show that either the

[40] Sharman v. Holliday, (1904), 1 K. B. 235, 6 W. C. C. 147; Mead v. Lockhart, (1909), 2 B. W. C. C. 398; Cawdor, etc., Collieries Co. v. Jones, 1909), 3 B. W. C. C. 59.

[41] Taff Vale Ry. Co. v. Lane, (1910), 3 B. W. C. C. 299.

[42] Carson-Payson Co. v. Industrial Commission, 285 Ill. 365.

injury or the disability was greater or less than that indicated by such award.[43]

§ 218. Attorneys' and physicians' fees. Paragraph (c) of Section 19 of the Act provides: "The fees and the payment thereof of all attorneys and physicians for services authorized by the Commission under this Act shall, upon request, of either the employer or the employee, or the beneficiary affected, be subject to the review and decision of the Industrial Commission."

The spirit and intention of the Compensation Law is to give the workman and his dependents relief as soon as practicable after the accident without expense for attorneys or costs of suit, and without the interposition of third persons, if possible.

A rebuke was administered by an English court to an intermeddling attorney who commenced proceedings for compensation without giving the employer opportunity to settle the case amicably, Lord Justice Sterling saying that the Workmen's Compensation Act was intended for the benefit of workmen and not for the benefit of the legal profession.[44]

Section 21 of the Illinois Act provides that the compensation claim or award shall not be subject to any lien and if the claimant in a compensation case employs an attorney he, therefore, has no lien against the claim for services rendered.

It has been held that excessive attorney fees which have not been approved by the Industrial Commission may be recovered from the attorney by the compensation claimant.[45]

If the Commission enters a decision as to the amount of attorney fees to be allowed and the Act contains no express provision for appeal from such decision, such appeal will not be allowed, inasmuch as any appeal under the Act would be a statutory one and not a matter of constitutional right.[46]

[43] Pedlow v. Swartz Electric Co., 120 N. E. (Ind. App.) 603.

[44] Field v. Longden, (1902), 1 K. B. 47, 4 W. C. C. 20.

[45] May v. Charles Hoertz & Son, 170 N. E. (Mich.) 305.

[46] Galvin v. Brown, 121 N. E. (Ind.) 447, 17 N. C. C. A. 1066.

It has been held that a physician examining the claimant, qualified as a witness in his behalf, should not be awarded more than the regular witness fee.[47]

§ 219. Refusal to submit to medical and surgical treatment. Paragraph (d) of Section 19 provides that "if any employee shall persist in unsanitary or injurious practices which tend to either imperil or retard his recovery or shall refuse to submit to such medical or surgical treatment as is reasonably essential to promote his recovery, the Commission may, in its discretion, reduce or suspend the compensation of any such injured employee." This is a very comprehensive provision and adds to the duty of submitting to a physical examination such as is provided for in Section 12 and Section 19 (c), the additional duties of refraining from unsanitary or injurious practices, and of submitting to proper medical and surgical treatment. Whether the employee is persisting in unsanitary and injurious practices is a question of fact for the Commission to determine; but if such practices are persisted in, the Commission has power to reduce or suspend the compensation, if such practices, in its judgment, tend to either imperil or retard recovery. Whether the employee has *persisted* in such practices, or has merely through ignorance or other excusable neglect in a single instance failed to give proper attention to his injury, is also a question for the Commission. For example, if the injury appears insignificant and the employee in good faith believes it does not require the attention of a physician recommended by the employer and treats the wound at his home, he is not guilty of such misconduct as to suspend his compensation.[48]

It is generally held that mere neglect to procure proper medical attention because of an honest belief that the injury is not serious and does not require it, will

But see Rawlings v. Workmen's Compensation Board, 218 S. W. (Ky.) 985.

[47] Stoica v. Swift & Co., 160 N. W. (Nebr.) 964.

[48] Hall v. J. LaCourciere Co., 104 Atl. (Conn.) 348, 17 N. C. C. A. 390.

not deprive the injured employee of his right to compensation;[49] and it has been held in Pennsylvania that compensation will not be forfeited for refusal of medical attendance if there has been no increase in incapacity due to such refusal;[50] and mere mishaps causing subsequent injuries to a workman due to his crippled condition will not be construed as misconduct on his part so as to deprive him of his right to compensation.[51]

On the other hand, if it is found that the injured workman has persistently neglected to take proper care of himself under all the circumstances and that such want of care, in the opinion of the Commission, either tends to imperil or retard his recovery, in either case the compensation payments may be either reduced or suspended. It will be observed that the Commission is given no authority to end compensation payments under this provision, whereas the workman's failure to submit to a physical examination when demanded, under the provisions of Section 12 of the Act, deprives him of the right to any compensation during the period of such refusal.[52]

It is error to deny compensation therefore in a proper case, where medical attention has been refused, but the compensation should merely be suspended during the period of such refusal.[53]

In a leading English case it was said that it is "the duty of every workman under the Act to co-operate with his doctor towards his own restoration to health and working capacity."[54]

It has been held in Wisconsin that mere failure on the part of the injured employee to go to the employer's doctor for treatment, and as a result of which an in-

[49] Dorish v. Cudahy Packing Co., 171 Pac. (Kas.) 915.

[50] Neary v. Philadelphia Reading Coal & Iron Co., 107 Atl. (Pa.) 696.

[51] Cook v. Chas. Hoertz & Son, 164 N. W. 464, 15 N. C. C. A. 400. See also Kinney v. Cadillac Motor Car Co., 165 N. W. (Mich.) 651, 15 N. C. C. A. 586.

[52] See § 200, *ante, et seq.*

[53] Rainey v. Tunnel Coal Co., 105 Atl. (Conn.) 333.

[54] Amys v. Barton, (1912), 1 K. B. 40, 5 B. W. C. C. 117, 119. See also Pontiatowski v. Stickley Bros. Co., 160 N. W. (Mich.) 569, 15 N. C. C. A. 77.

fection follows, will not deprive the injured man of his right to compensation, where it does not appear that the employee knew that the doctor was the employer's physician selected for the purpose of treating such cases.[55]

It is obviously difficult for the Industrial Commission to determine in all cases what medical and surgical treatment may be reasonably essential to promote the workman's recovery. Refusal to submit to operations of a serious character and of doubtful result ought not to influence the Commission to reduce or suspend compensation. Where the benefit to follow from the operation is problematical, the refusal will not be held unreasonable; and if the cost is in excess of the surgical aid required of the employer and the employee has not the means to pay the excess, he may properly refuse the operation for that reason.[56]

In a Nebraska case a demand was made that the injured employee submit to an X-Ray examination and also to an injection of a certain solution into his body. The employer's physician testified that in the hands of an expert the injection involved no danger. The employee consented to the X-Ray but refused to permit the injection, and it was held that his refusal did not bar his right to compensation.[57]

As to X-Ray examinations, it is held that unless it appears that the X-Ray is reasonably necessary as an aid to proper treatment of the injured, a refusal to have an X-Ray picture taken will not prejudice the injured person's right to compensation.[58]

The rule has been well stated by the Appellate Court of Indiana as follows: that an injured employee seeking compensation must submit to an operation which will cure him when so advised by his attending physician, when such operation is not attended with danger

[55] Banner Coffee Co. v. Industrial Commission, 174 N. W. (Wis.) 544.

[56] Marshall v. Ransome Concrete Co., 166 Pac. (Cal.) 846, 15 N. C. C. A. 81.

[57] United States Fidelity & Guaranty Co. v. Wickline, 173 N. W. (Nebr.) 689, 17 N. C. C. A. 1065.

[58] *Ibid.*

to life or health or extraordinary suffering; and if, as a result of his refusal to consent to such operation, he suffers permanent impairment, the employer will not be compelled to compensate him for the resulting permanent impairment;[59] but it was held that the injured man's insistence that an injured limb be saved, if possible, and not amputated, was not necessarily an unreasonable refusal to submit to an operation so as to forfeit his right to compensation.[59a] It may be stated as a general rule, however, that the right to compensation will be defeated by the refusal of the injured employee or those representing him to submit to an operation, where, according to the best medical or surgical opinion the operation offers a reasonable prospect of restoration or relief from the incapacity from which the workman is suffering.[60]

For example, where the loss of sight of an eye which was injured was due to a cataract which the doctors agreed could be removed without any substantial danger and, if removed, would, in all probability, restore it, it was held unreasonable in a workman to refuse, and that the loss of sight must be attributed to his refusal and not to the accident.[61]

And it is held that a simple operation for hernia, without which the employee could not be cured and which was comparatively simple and could be performed without serious danger and without an anesthetic, should be permitted by the employee, and that his refusal of such an operation would suspend his compensation.[62]

In an English case a workman's forearm being broken by accident, he had it set by a surgeon, who did the work so negligently that there was a vicious union, the bones being united, but overlapping and at a bad angle, pre-

[59] Enterprise Fence, etc., Co. v. Majors, 121 N. E. (Ind. App.) 6.

[59a] *Ibid.*

[60] Vonnegut Hardware Co. v. Rose, 120 N. E. (Ind. App.) 608.

[61] Joliet Motor Co. v. Industrial Board, 280 Ill. 148, 15 N. C. C. A. 75, 1071.

[62] O'Brien v. Albert A. Albrecht Co., 172 N. W. (Mich.) 601, 16 N. C. C. A. 411.

venting use of the wrist. The man being for this reason still incapacitated, the employers requested him to have the arm broken again and reset. He refused, and the employers applied for review on the ground that the incapacity was no longer due to the injury, but either to the workman's unreasonable refusal to undergo the operation, or to the negligence of the surgeon. The County Court Judge found that the workman's refusal was reasonable.[63]

On the other hand, simple operations, with complete recovery of working capacity comparatively certain, should be submitted to by the workman. For example, a workman suffered from adhesions to an injured arm. His employers asked him to undergo an operation for the breaking down of the adhesions, and he refused. The employers applied to terminate the compensation, and the County Court Judge found that the workman was no longer incapacitated by reason of the accident, and terminated the compensation, and this finding was sustained by the Court of Appeal.[64]

Failure to comply with simple medical directions, will warrant a reduction or suspension of compensation.[65]

The question always should be whether, under all the circumstances, the workman is acting reasonably or unreasonably in refusing the medical or surgical treatment,[66] and the burden of proving that the present incapacity is due to the workman's refusal to accept such treatment is upon the employer.[67]

It has been held that the workman is not unreasonable in refusing the operation, where in the opinion of his own doctor, it involves considerable risk to life,[68]

[63] Humber Towing Co. v. Barclay, (1911), 5 B. W. C. C. 142.

[64] Wheeler, Ridley & Co. v. Dawson, (1912), 5 B. W. C. C. 645.

[65] Dowds v. Bennie & Son, (1903), 5 F. 268, 4 S. L. R. 239; Smith v. Coed Taton Col. Co., (1900), 2 W. C. C. 121; Steele v. Bilham, (1910), 128 L. T. Newsp. 416; Upper Forest, etc. v. Grey, (1910), 3 B. W. C. C. 424.

[66] Tutton v. S. S. Majestic, (1909), 2 K. B. 54, 2 B. W. C. C. 346.

[67] Marshall v. Orient Steam Nav. Co., (1910), 1 K. B. 79, 3 B. W. C. C. 15.

[68] Tutton v. S. S. Majestic, (1909), 2 K. B. 54, 2 B. W. C. C. 346.

or where reliable doctors have advised against it,[69] or where the workman's doctor advises that the treatment would be useless.[70]

An objection that the employee forfeited his right to part of his compensation by his refusal to undergo an operation is waived by failure to assign it as ground for review before the Industrial Commission.[71]

In a Wisconsin case it was claimed that the proximate cause of the death of a workman was his refusal to submit to and follow the treatment of his physician, and it was held that in order to support this claim it was necessary to show: (1) that the undisputed evidence disclosed an unreasonable refusal to follow the prescribed treatment, and (2) that had he followed it, death would not have resulted.[72]

§ 220. Effect of agreements. Section 23 of the Illinois Act provides that no employee, personal representative or beneficiary shall have power to waive any of the provisions of the Act in regard to the amount of compensation payable. This provision should not be construed as to prevent injured workmen from making binding legal agreements with their employers under the Workmen's Compensation Act, because obviously one of the chief concerns of the Legislature in enacting this statute was to encourage settlements between employers and employees.[73]

The provisions of Section 23 are merely declaratory of the general rule that the law will not lend itself to support a claim founded upon its violation,[74] and it is, therefore, doubtful if, in the case of a specific right conferred and enjoined by the statute, it could be waived, even in the absence of the express provisions of Section 23.[74a]

[69] Sweeney v. Pumpherston, (1903), 5 F. 972.

[70] Moss v. Akers, (1911), 4 B. W. C. C. 294.

[71] Chicago Steel Foundry Co. v. Industrial Commission, 286 Ill. 544.

[72] Weiner v. Industrial Commission, 176 N. W. (Wis.) 781.

[73] *Ante*, § 208, *et seq.*; In re McCarthy, 115 N. E. (Mass.) 764, 14 N. C. C. A. 346; Daich v. Studebaker Corp., 161 N. W. (Mich.) 927, 14 N. C. C. A. 131.

[74] Shenk v. Phelps, 6 Ill. App. 612, 620, 9 Ill. Notes, 87, § 290.

[74a] See § 227, *post*.

It is, of course, true that an employer will not be permitted by private agreement unlawfully to relieve himself from the express liability created by the Act, the extent of which liability is known by the parties at the time of making the agreement.[75]

If an agreement is made to pay compensation, the agreement is enforcible, even though the claim might have been barred by lapse of time if such agreement had not been made;[76] and it has been held by the Supreme Court of Illinois that it is not essential that a claim shall have been made against the employer previous to presenting it to the Commission in order to give the employer an opportunity to make a settlement.[77]

It has been held that the action for compensation is a transitory one and if the settlement is made in another state where it is legal and valid, it is a bar to a claim for compensation wherever made.[78]

It has been held under the English statute that a valid and binding agreement in settlement of a claim for compensation, and which arranges the terms of payment or ends the compensation, is a bar to a proceeding for review;[79] but that the fact that the workman returns to work after injury and the receipt of partial compensation, without any definite understanding as to whether further compensation will be paid, does not amount to an implied agreement barring him from paying further compensation upon review or otherwise.[80]

It has also been held that an arbitrator cannot order that compensation shall stop at some future time in the expectation that the workman will recover within such

[75] International Coal & Min. Co. v. Industrial Com., 293 Ill. 524; Chicago Rys. Co. v. Industrial Board, 276 Ill. 112, 15 N. C. C. A. 164; Wabash Ry. Co. v. Industrial Commission, 286 Ill. 194; Tribune Co. v. Industrial Commission, 290 Ill. 402.

[76] Tribune Co. v. Industrial Commission, 290 Ill. 402; Crew v. Trainor, 102 Atl. (N. J.) 905.

[77] Mississippi Power Co. v. Industrial Commission, 289 Ill. 353; but see Dotson v. Proctor & Gamble Mfg. Co., 169 Pac. (Kas.) 1136.

[78] Leach v. Mason Valley Mines Co., 161 Pac. (Nev.) 513, 15 N. C. C. A. 877.

[79] Bradbury v. Bedworth Coal & Iron Co., (1900), 2 W. C. C. 138.

[80] Williams v. Vauxhall Colliery Co., (1907), 2 K. C. 433, 9 W. C. C. 120.

time, and if such an order is made it will not bar a subsequent review based on actual conditions.[81]

§ 221. Costs. The Illinois Act is not specific as to the power of the Industrial Commission with reference to the costs of the proceedings before it or before the arbitrators, but the power to tax costs is recognized in some cases, as where the party filing his election for a committee of arbitration shall deposit $20.00 with the Commission to be paid as compensation for such arbitrators;[82] and where, in preparing the record for *certiorari* proceedings in the Circuit Court, the party commencing such proceedings is required to pay the Commission 5c per hundred words for testimony taken, and 3c per hundred words for all other matters contained in the record, etc.[83] Also, upon application for review by the employer, the Commission is authorized in certain cases to tax mileage fees as costs and require their deposit with the petition for review.[84]

It has been held, however, that the taxation of costs in the usual manner in the absence of a positive or permissive statute will not be allowed.[85]

§ 222. Rules of the Commission.[86] Section 16 of the Illinois Act authorizes the Industrial Commission to "make rules and orders for carrying out the duties imposed upon it by law, which rules and orders shall be deemed *prima facie* reasonable and valid." Under this authority, the Commission is empowered to make all reasonable and necessary rules to bring about an effective administration of the Act and to facilitate proceedings before the Commission; but the rules of the Commission must, of course, be consistent with the provisions of the Compensation Act. For example, it has been held that the Commission may not make a rule that the date of the occurrence of the disability shall be considered the "date of the accident" when the statute provides for compensa-

[81] Ball v. Jewell, (1910), 2 K. B. 673, 3 B. W. C. C. 503.
[82] Par. (a), § 19.
[83] Par. (f) (1), § 19.
[84] Par. (h), § 19.
[85] Nelson v. Industrial Insurance Department, 176 Pac. (Wash.) 15, 17 N. C. C. A. 1057.
[86] See Rules of Illinois Industrial Commission, *post*, p. 557.

tion "after the injury;" and that while the Act is remedial in its nature and to be liberally construed, there is no authority for the substitution of the words of a rule of the Commission for the express words of the statute;[87] nor can the Commission make any rules which will operate to defeat the mandate of a court of competent jurisdiction.[88]

It has been said that any methods of procedure which do not transgress the constitutional mandate requiring due process of law, or the provisions of the Act itself, are within the power of the Commission to establish by proper rules and that the Commission is not obliged to follow the methods in use in the courts;[89] and it has been held that the Commission has authority to make rules enabling it to retain jurisdiction of the cases for the purpose of correcting errors and mistakes in the administration of its business.[90]

Failure to plead a defense required by the rules of the Board to be especially pleaded amounts to a waiver of such defense.[91]

If the Commission establishes rules, it must itself conform to them in its administration of the law.[92]

§ 223. Judgment on the award. Paragraph (g) of Section 19 provides that "either party may present a certified copy of the decision of the Industrial Commission when no proceedings for review thereof have been taken, or of the decision of such arbitrator or committee of arbitration when no claim for review is made, or of the decision of the Industrial Commission after hearing upon review providing for the payment of compensation according to this Act, to the Circuit Court of the county in which such accident occurred or either of the

[87] In re McKenna, 103 Atl. (Me.) 69.

[88] Kline v. Industrial Insurance Commission, 172 Pac. (Wash.) 343.

[89] Massachusetts Bonding & Insurance Co. v. Industrial Acc. Com., 168 Pac. (Cal.) 1050, 16 N. C. C. A. 755; 17 *Id.* 263.

[90] Wilcox v Clarage Foundry & Mfg. Co., 165 N. W. (Mich.) 925, 16 N. C. C. A. 751.

[91] Northern Indiana Gas & Electric Co. v. Pietzvak, 118 N. E. (Ind. App.) 132, 15 N. C. C. A. 168.

[92] Hamilton v. Macy Co., 162 N. W. (Mich.) 280, 14 N. C. C. A. 96, 436.

parties are residents, whereupon said court shall enter a judgment in accordance therewith;" and that if the employer does not institute proceedings for review and refuses to pay compensation according to the award, the court, in entering judgment, may tax as costs against him the reasonable costs and attorney fees in the arbitration proceedings and in the court entering the judgment.

On application to the Circuit Court for judgment on the award under this provision, where no proceedings for review have been instituted by the employer and compensation has not been paid according to the award, the judgment entered by the court is in the nature of an execution of the award and is merely the statutory method provided for enforcing collection of the award for the benefit of the claimant. Upon such application for the entry of judgment on the award, the court has no jurisdiction to review the proceedings, construe the statute, or determine the correctness of the decision of the Commission, as the two methods of review provided by Section 19 of the Act are exclusive.[93]

If the claimant desires a judgment upon the award in order to enforce payment of his claim, he must proceed in the manner provided by Paragraph (g) of Section 19, for the Circuit Court, in the proceedings for review by *certiorari,* only has authority to confirm the award of the Industrial Commission or set it aside, and has no authority to enter a money judgment and order execution.[94]

The provision of the statute authorizing attorney fees, where no proceedings for review are taken and the award is not paid, is not unconstitutional;[95] but attorney fees

[93] Friedman v. Industrial Commission, 284 Ill. 554, 17 N. C. C. A. 1062; Bernstein v. Brothman, 275 Ill. 290, 14 N. C. C. A. 87; Fitt v. Central Public Service Co., 273 Ill. 617; People v. McGoorty, 270 Ill. 610, 10 N. C. C. A. 978; Courtier v. Simpson Construction Co., 264 Ill. 488, 6 N. C. C. A. 548.

[94] Rosenthal Co. v. Industrial Commission, 290 Ill. 323; Otis Elevator Co. v. Industrial Commission, 288 Ill. 396.

[95] Friedman v. Industrial Commission, 284 Ill. 554, 17 N. C. C. A. 1062.

may be allowed only when the employer refuses to pay compensation.[96]

Interest at 5% may be allowed by the court in entering judgment on the award from the date of the award;[97] and interest on installments of the award, where it is payable in installments, also begins to run from the date of the award.[98]

The courts have no jurisdiction to enforce the award except by suit brought upon it for failure to comply with it, unless the statute gives the courts express authority to enter a judgment upon application and notice, as provided by the Illinois Act.[99]

[96] McMurray v. Peabody Coal Co., 281 Ill. 218, 17 N. C. C. A. 1061.

[97] *Ibid.*

[98] Chicago Traction Co. v. Industrial Board, 282 Ill. 230.

[99] Texas Employers Insurance Assn. v. Bryan, 198 S. W. (Tex.) 342.

CHAPTER XV

PRIORITY OF THE COMPENSATION CLAIM

Sec. 21 of the Illinois Act

§ 21. No payment, claim, award or decision under this Act shall be assignable or subject to any lien, attachment or garnishment, or be held liable in any way for any lien, debt, penalty or damages. A decision or award of the Industrial Commission against an employer for compensation under this Act, or a written agreement by an employer to pay such compensation shall, upon the filing of a certified copy of the decision or said agreement, as the case may be, with the Recorder of Deeds of the County, constitute a lien upon all property of the employer within said county, paramount to all other claims or liens, except mortgages, trust deeds, or for wages or taxes, and such liens may be enforced in the manner provided for the foreclosure of mortgages under the laws of this State. Any right to receive compensation hereunder shall be extinguished by the death of the person or persons entitled thereto, subject to the provisions of this Act relative to compensation for death received in the course of employment: *Provided,* that upon the death of a beneficiary, who is receiving compensation provided for in Section 7, leaving surviving a parent, sister or brother of the deceased employee, at the time of his death dependent upon him for support, who were receiving from such

Sec. 21 of the Illinois Act

beneficiary a contribution to support, then that proportion of the compensation of the beneficiary which would have been paid but for the death of the beneficiary, but in no event exceeding said unpaid compensation, which the contribution of the beneficiary to the dependent's support within one year prior to the death of the beneficiary bears to the compensation of the beneficiary within that year, shall be continued for the benefit of such dependents, notwithstanding the death of the beneficiary. [Amended by Act approved June 28, 1919.

§ 224. The compensation lien. This section provides that the right to compensation, or any claim therefor, shall not be assignable or subject to any other lien (except wages, taxes and mortgages), attachment or garnishment. Under the similar provision of the English Act,[1] it has been held that an employer cannot set off against compensation due from him to the workman a sum awarded the employer as expenses against the workman in an application for review.[2] It has been held, however, that the workman may consent to his employer deducting his rent from weekly compensation payments, where the employer is the landlord of the employee.[3]

Statutory or other liens, therefore, for legal, medical or burial expense are not enforceable against the amount due from the employer as compensation.[4]

§ 225. Effect of death or marriage of compensation claimant. This section also provides that the "right to receive compensation shall be extinguished by the death of the person or persons entitled thereto," except that upon the death of a beneficiary who has been receiving compensation payments, leaving a parent, sister or brother of the deceased employee, dependent at the time

1 6 Edw. VII, Chap. 58, Schedule 1 (19).

2 Roswell Gas Coal Co. v. M'Vicar, (1904), 7 F. 290.

3 Brown v. S. E. & C. R. Co., (1910) 3 B. W. C. C. 428.

4 See Heffernan v. Morse, etc., Co., 2 Cal. Ind. Acc. Com. 364, (1915).

of his death, and who was receiving support from such beneficiary at the time of his death, such parent, sister or brother shall be entitled to that proportion of the amount which would have been paid to such beneficiary which the contributions of the beneficiary to such parent, sister or brother within the previous year bears to the compensation due such beneficiary during that year.

With this exception, therefore, the right to compensation, under the Illinois Act, does not survive the death of the person entitled thereto. It therefore follows that the lien established by the recording of a certified copy of a decision awarding compensation, should be released and discharged upon proper proof of the death of the person entitled thereunder.[5]

Various provisions are found in American compensation laws effecting the question of whether the right to compensation shall survive the death of the person entitled thereto, but in the absence of some provision vesting in some survivor the right to the compensation payments, the general rule is that the death terminates the compensation. For example, where an employee sustained an injury and filed with the Commission his claim for compensation, but before an award was made he died from other causes, it was held that the action did not survive to his personal representative, but was a right limited to the injured employee.[6] And an award of weekly payments does not give the injured employee a vested interest in payments not due, and the right to such payments does not survive his death from natural causes.[7] The personal representative is entitled only to the amount of compensation due at the time of the death of the injured employee.[8] Whatever compensa-

[5] Lahoma Oil Co. v. State Industrial Commission, 175 Pac. (Okla.) 836; In re Bartoni, 114 N. E. (Mass.) 663, 15 N. C. C. A. 1025.

[6] Ray v. Industrial Ins. Commission, 168 Pac. (Wash.) 1121.

[7] Wozneak v. Buffalo Gas Co., 175 App. Div. (N. Y.) 268, 161 N. Y. Supp. 675.

[8] In re Nichols, 104 N. E. (Mass.) 566, 11 N. C. C. A. 501; In re Bartoni, 114 N. E. (Mass.) 663, 15 N. C. C. A. 1025; In re Murphy, 113 N. E. (Mass.) 283, 13 N. C. C. A. 717; 14 *Id.* 425; Erie R. Co. v. Gallaway, 102 Atl. (N. J.) 6.

tion accrues during the lifetime of the injured employee becomes upon his decease, an asset of his estate. The dependents have no right to the payment of compensation during the life time of the deceased, or to any which remains unpaid at the time of his death. On the other hand the estate of the deceased employee has no interest in compensation for death, except as to compensation for burial expense.[9]

Insanity has been held not to defeat a prior award for compensation.[10]

Marriage or other change in the status or financial condition of the dependent does not abate compensation payments, in the absence of a provision in the law to that effect.[11] A dependent widow may remarry, or become an heiress to a fortune after her husband's death, and thus wholly independent of the payments provided for by the Act, but unless the Act provides for the adjudication of such facts and some amendment of the award of compensation due her, at the time of her husband's death, such facts cannot have any effect upon her continued right to the payment of compensation. The ascertainment of the fact of dependency is made as of the time of the injury to the deceased employee.[12]

And if an award is made to a widow and she then remarries, and the compensation law is afterwards amended providing that by remarrying a dependent widow shall forfeit her right to further compensation, it is held that the amendment is not retroactive so as to forfeit the right to compensation of a widow whose rights were determined under the prior law.[13]

[9] Jackson v. Berlin Construction Co., 105 Atl. (Conn.) 326.

[10] In re Walsh, 116 N. E. (Mass.) 496, 15 N. C. C. A. 345, 1031.

[11] Wangler Boiler Co. v. Industrial Commission, 287 Ill. 118; Adelman v. Ocean Accident & Guar. Co., 101 Atl. (Md.) 529.

[12] Botts Case, 119 N. E. (Mass.) 755.

[13] Hansen v. Brann & Stewart Co., 103 Atl. (N. J.) 696, 13 N. C. C. A. 188.

CHAPTER XVI

AGREEMENTS AND WAIVER

Secs. 22 and 23 of the Illinois Act

§ 22. Any contract or agreement made by any employer or his agent or attorney with any employee or any other beneficiary of any claim under the provisions of this Act within seven days after the injury shall be presumed to be fraudulent.

§ 23. No employee, personal representative, or beneficiary shall have power to waive any of the provisions of this Act in regard to the amount of compensation which may be payable to such employee, personal representative or beneficiary hereunder except after approval by the Industrial Board.

§ 226. Agreements presumed fraudulent. Section 22 of the Act is obviously intended to prevent agreements being forced upon employees or dependents during that period immediately following the injury, in which the injured man or his family might be easily susceptible to the arts of the professional adjuster and the employer who might be disposed to take advantage of the unfortunate circumstances attending the injury, to force a settlement before the workman or his dependents had an opportunity to ascertain their rights, and to recover in whole or in part from the shock of the injury. It is therefore wisely provided that any settlement agreements made within seven days after the injury shall be presumed to be fraudulent. While settlements, fairly and

regularly made, are encouraged, the concern of the State should be and is that the benefits of the Act be not inconsiderately or fraudulently bartered away, and the injured workman or his dependents immediately thrown upon that charitable aid, which systematic compensation aims to avoid.

§ 227. Waiver of provisions of the act. Section 23 of the Act provides that no one entitled to compensation payments shall "have power to waive any of the provisions of this Act, in regard to the amount of compensation which may be payable," etc. As we have elsewhere observed [1] this provision should not be construed so as to prevent injured workmen or their dependents, making binding agreements with employers under the Compensation Act, because manifestly one of the chief concerns of the legislature in enacting the statute, was to encourage settlements. Section 18 of the Act provides that "all questions arising under this Act *if not settled by agreement of the parties interested,*" etc. Section 19 provides that "any disputed questions of law or fact *upon which the employer and employee or personal representative cannot agree,*" etc. The whole purpose of the Act is to promote amicable adjustment of injury claims, and better relations between employer and employed.

Without the provisions of Section 23, the rule is that the law will not lend its support to a claim, founded upon its violation.[2] It would therefore seem doubtful whether an employee or beneficiary under the Compensation Act, given a specific right by statute, enacted under the police power, for the general public good, and as declaring the public policy of the State with reference to injury claims, could waive any such right. Neither this rule, however, nor the provisions of Section 23 would prevent settlement by agreement, in such form as to be binding and conclusive upon the parties to it of any questions arising under the Act, about which there might be rea-

[1] *Ante*, Chap. XIII, § 220.
[2] Shenk v. Phelps, 6 Ill. App. 612, 620, 9 Ill. Notes 87, § 292.

sonable differences between the employer and the claimant, within the legitimate field of contract. Where such agreements are properly made, they should not, by any process of construction, be held to amount to waivers of statutory rights, in conflict with the provisions of Section 23.[3]

In both disability and dependency cases the amount of compensation to which the claimant will be entitled under the statute will depend in large part upon his own estimate.

If the claimant agrees that his circumstances as to disability or dependency entitle him to an agreed amount of compensation, his contract does not amount to a waiver, in the absence of a subsequent change of conditions, and if subsequent conditions indicate an increase of disability not contemplated by the agreement, he is protected by his statutory right of review, but if conditions remain the same the claimant ought not to be permitted to attempt to show that he waived his rights by his previous agreement merely because he subsequently changes his opinion as to what the degree of his disability or dependency was at the time he made the settlement agreement.

It is contrary to the policy of the law to allow an employer operating under it to relieve himself from a recognized liability under the Act by private agreement or contract with the employee.[4] This is especially true with reference to that form of employment contract which includes as one of its terms an agreement releasing the employer from part or all of his legal obligations growing out of accidental injuries sustained in the course of the employment.[5] The economic benefits which it was sought to obtain through workmen's compensation legislation would be lost if employers were permitted by pri-

[3] See Fox v. Battersea Borough Council, (1911), 4 B. W. C. C. 261.

[4] International Coal & Min. Co. v. Industrial Com., 293 Ill. 524; Wabash Ry. Co. v. Industrial Commission, 286 Ill. 194.

[5] Chicago Rys. Co. v. Industrial Board, 276 Ill. 112, 15 N. C. C. A. 164; Hines v. Industrial Accident Commission, 188 Pac. (Cal.) 277.

vate agreement to deprive the injured workman and his dependents of compensation designed reasonably to provide for them during the period of distress following the accident and to prevent them from becoming charges upon society. This does not mean, however, that private settlements made between employer and the injured employee or his dependents may not be legal and binding. The compensation law encourages such settlements, but it also carefully safeguards first, the public, and second the injured employee and his dependents, against unfair or illegal settlement agreements designed to shift the economic burden of industrial accidents from the industry upon the public, because the fundamental purpose of compensation legislation is to place such burden upon the industry in which the injury occurs, and relieve the public from such burden. The legislature did not intend, by the passage of workmen's compensation laws to suggest that workmen are in any sense under guardianship or other disability, or that they and their employers are not free agents, vested with full power to make amicable settlements of liability claims in disputed cases, but such settlements must be in substantial accord with the provisions of the Compensation Act for the larger economic reasons referred to as well as on account of the private rights of the workman and his dependents which the law creates.[6] Therefore settlements which are made for arbitrary sums, far below the amounts provided for by the statute, are not valid and neither the Commission nor the court has any power to approve such settlements.[7] Nor can the jurisdictional requirements of the Act be waived by either party.[8] And where the Commission has acquired jurisdiction of a matter, it cannot be taken away by agreement of the parties.[9] And where the insurance carrier is either directly responsible to the injured workman or acts as the agent for the employer in making set-

[6] Dotson v. Proctor & Gamble Mfg. Co., 169 Pac. (Kan.) 1136.

[7] In re Beggs, 117 N. E. (Ind. App.) 215.

[8] In re Levangie, 117 N. E. (Mass.) 200, 16 N. C. C. A. 744, 17 N. C. C. A. 163.

[9] International Coal & Min. Co. v. Industrial Com., 293 Ill. 524.

tlements it is bound by the same rule of responsibility as the employer, and a release of substantial rights under the Act to the insurer is as ineffective as a release to the employer.[10]

[10] Illinois Indemnity Exch. v. Industrial Commission, 289 Ill. 233.

CHAPTER XVII

NOTICE OF ACCIDENT AND CLAIM

Sec. 24 of the Illinois Act

§ 24. No proceedings for compensation under this Act shall be maintained unless notice of the accident has been given to the employer as soon as practicable, but not later than 30 days after the accident. In cases of mental incapacity of the employee, notice must be given within six months after such accident. No defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings by arbitration or otherwise by the employee, unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy. Notice of the accident shall state the name and address of the employee injured, the approximate date and place of the accident, if known, and in simple language the cause thereof; which notice may be served personally or by registered mail, addressed to the employer at his last known residence or place of business: *Provided,* that the failure on the part of any person entitled to such compensation to give such notice shall not relieve the employer from his liability for such compensation, when the facts and circumstances of such accident are known to such employer, his agent or vice principal in the enterprise. No proceedings for compensation under this Act shall be maintained unless claim for compensation has been made within six months after the accident, or in the event that payments have

Sec. 24 of the Illinois Act

been made under the provisions of this Act unless written claim for compensation has been made within six months after such payments have ceased and a receipt therefor or a statement of the amount of compensation paid shall have been filed with the Commission: *Provided,* that no employee who after the accident returns to the employment of the employer in whose services he was injured shall be barred for failure to make such claim if an application for adjustment of such claim is filed with the Industrial Commission within eighteen months after he returns to such employment and the said Commission shall give notice to the employer of the filing of such application in the manner provided in this Act. [Amended by Act approved June 28, 1919.

§ 228. Notice of the accident. The only uncertain term in this section with reference to the time within which notice must be given is that the first notice of the accident must be given to the employer "as soon as practicable." Whether the notice is thus given depends upon the facts in each case and where there is a finding that notice was thus given it will not be disturbed when there is any evidence to support it.[1]

A month's delay has been held fatal to the claim.[2] Thirty days is the maximum limit of time given by this section for the giving of such notice of accident. The notice is jurisdictional and in the absence of proof of notice, the claim cannot be entertained.[3]

It is important that there should be a reasonable enforcement of the provisions of the Act as to notice because laxity in this respect opens the door to fraudulent claims.[4] It should not be treated as a mere informality

[1] Duffy v. Brookline, 115 N. E. (Mass.) 248, 14 N. C. C. A. 537, 650.

[2] In re Levangie, 117 N. E. (Mass.) 200, 16 N. C. C. A. 744; 17 *Id.* 163; Leach v. Hickeson, (1911), 4 B. W. C. C. 153.

[3] Ohio Oil Co. v. Industrial Com., 293 Ill. 461.

[4] Casparis v. Industrial Board, 278 Ill. 77, 83, 15 N. C. C. A. 388, 390.

and dispensed with without definite proof of facts showing a reasonable excuse for not giving it.[5] For example, it was held by the Supreme Court of Illinois that the mere fact that an injured employee of a carpenter told the foreman, in response to a question as to what caused him to limp, that he had wrenched his leg in attempting to tear up a floor he was working on, without making at the time any claim for compensation or indicating that any claim would be made or that the injury was serious, is not sufficient notice of the circumstances of the accident to entitle the injured man to compensation.[6]

The Illinois Supreme Court has said: "We think it is both the spirit and intention of the Act that the employer shall have notice, either by formal notice or knowledge of such facts and circumstances of the accident as will apprise him that his employee has sustained injuries of such a character as to entitle him to compensation under the Act, and that he may reasonably expect that such a claim will be made."[7]

It is provided that defects or inaccuracies in the notice shall not bar proceedings for compensation unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy; and, of course, under this provision, the burden would be upon the employer to prove such prejudice, and whether he had been so prejudiced would be a question of fact for the commission to determine;[8] but in New York it is held that the presumption in the absence of evidence to the contrary is that failure of the claimant to give the notice required by law is prejudicial to the employer.[9]

It has been said that if notice is given as required by the statute and opportunity is thus afforded for prompt

[5] Bloomfield v. November, 219 N. Y. 374, 14 N. C. C. A. 147, 664.

[6] Bushnell v. Industrial Board, 276 Ill. 262, 14 N. C. C. A. 654, 772.

[7] *Ibid;* but see Parker-Washington Co. v. Industrial Board, 274 Ill. 498, 14 N. C. C. A. 127, 653, 1079.

[8] Wm. Rahr Sons Co. v. Industrial Commission, 163 N. E. (Wis.) 169, 14 N. C. C. A. 663; Breslaner v. Industrial Commission, 167 N. W. (Wis.) 256; Bramley v. Evans & Son, (1909), 3 B. W. C. C. 34.

[9] Andrews v. Butler Mfg. Co., 172 N. Y. Supp. 405; Dorb v. Sterns & Co., 167 N. Y. Supp. 415, 17 N. C. C. A. 90, 94.

general investigation of the accident so that care and attention may be given to prevent serious results, the purposes of the requirement as to notice are fulfilled; and that a failure to comply with such provisions must, for these reasons, be prejudicial to the employer.[10]

If the failure to give the statutory notice has not resulted in prejudice, the Commission should make appropriate findings to that effect.[11]

It is the duty of the Commission to hear evidence on the question and to act upon it and not to assume without evidence that the employer will or will not be prejudiced by any such defect or inaccuracy.[12]

Entire failure on the part of the employee, or other person entitled to compensation, to give such notice does not relieve the employer from liability to pay compensation when the facts and circumstances of the accident are known to the employer, his agent or vice-principal.[13] For example, where the foreman who was in charge of the work knew of the accident at the time it happened, and the general superintendent knew of it the next morning and was given the name of the injured man and the circumstances of the accident, failure to give notice was excused.[14]

Again, it was held that where the particulars of the accident were entered in a book by the employer's manager in the presence of the injured workman, it was sufficient notice.[15] Also, where the employer's foreman and attorney attended the inquest on the body of the dead employee and knew that it was claimed that the employee died as the result of a fall received in the employment, it was held sufficient notice of the accident.[16] And knowl-

10 Combes v. Geible, 123 N. E. (N. Y.) 452.

11 In re Colon, 172 N. Y. Supp. 475.

12 Bloomfield v. November, 114 N. E. (N. Y.) 805, 219 N. Y. 374, 14 N. C. C. A. 147, 664.

13 Parker-Washington Co. v. Industrial Board, 274 Ill. 498, 14 N. C. C. A. 127, 653, 1079.

14 *Ibid.*

15 Stevens v. Insoles, (1912), 1 K. B. 36, 105 L. T. 617. See *contra*, In re Murphy, 115 N. E. (Mass.) 40, 13 N. C. C. A. 717; 14 *Id.* 425.

16 Sulzberger & Sons Co. v. Industrial Commission, 285 Ill. 223, 17 N. C. C. A. 92.

edge of the foreman of the employer obtained from viewing the body of the injured man has been held sufficient.[17]

But notice required under the New York Act is not complied with where a woman employee pricks her finger and speaks of it at the time, but the injury later results in infection of which no notice is given. The Appellate Division of the Supreme Court of that State said:

"Is an employer bound to take notice of every trifling injury such as a pin prick because some hysterical woman calls for an antiseptic? Is he bound to anticipate that three days or a week later, or at any subsequent time, this trifling every day accident may eventuate in blood poisoning? There is little safety in doing business if every trivial pin puncture puts the employer on notice and compels him to follow up each employee to learn whether the puncture has resulted in infection. It opens the way to fraud and endangers the success of this innovation upon the common law rule of liability. There is not the slightest evidence in this case that the employer, the insurance carrier or the Commission ever had any notice of the alleged disability until the filing of the 'employee's first notice of injury' on May 15, 1915,—more than nine months after the alleged injury." [18]

And in Michigan it was held that failure to give the employer notice in writing within three months, as required by the statute, was sufficient to defeat an award based upon an attack of appendicitis, notwithstanding the fact that the employee told the foreman that he was going home because of sickness or pain, but without claiming any accident or any compensation therefor.[19] It is held that the giving of the notice required by the statute must be given to some officer or other person in authority to whom reports are usually or properly made.[20]

17 Western States Gas & Electric Co. v. Bayside Lumber Co., 187 Pac. (Kas.) 735; see also Simon v. Cathroe Co., 162 N. W. (Nebr.) 633, 14 N. C. C. A. 771; Joliet Motor Co. v. Industrial Board, 280 Ill. 148, 15 N. C. C. A. 75, 1071; Good v. City of Omaha, 168 N. W. (Neb.) 639.

18 Bloomfield v. November, 167 N. Y. Supp. 975, 14 N. C. C. A. 147, 664.

19 Armstrong v. Oakland Vinegar & Pickle Co., 163 N. W. (Mich.) 897, 17 N. C. C. A. 82, 165.

20 Herbert v. Lake Shore & Michigan Southern Ry. Co., 166 N. W. (Mich.) 923, 17 N. C. C. A. 81.

For example, it has been held that notice to an assistant foreman is not a sufficient notice under the statute.[21]

It has also been held that if, after verbal notice, the employer pays the workman partial compensation, he will be held to have waived the particular requirements of the statute;[22] but it has been held that the payment of doctor and hospital bills will not amount to a waiver and excuse the injured person from compliance with the provisions of the statute;[23] nor the voluntary payment of certain amounts for the relief of the injured workman, but not as compensation where liability for compensation is denied.[24]

It is generally held, however, that formal written notice is not necessary, and that a verbal notice of the accident which gives the employer the circumstances of the accident is sufficient.[25]

For example a statement by the employee's wife to the employer on the day of the funeral, and also a similar statement a week after the disease began, that her husband died from an infection received from poisoned hides, is a sufficient notice.[26] And telling the employer's foreman of the accident is generally held sufficient.[27]

But it is held in Maine that oral notice is not the statutory written notice and, although the employer may obtain from the foreman knowledge of the injury, it is not

[21] In re Colon, 172 N. Y. Supp. 475.

[22] Heinze v. Industrial Commission, 288 Ill. 342; Davies v. Point of Ayr Colliers, (1909), 2 B. W. C. C. 157.

[23] Twonko v. Rome Brass & Copper Co., 120 N. E. (N. Y.) 638, 17 N. C. C. A. 86, 172.

[24] Ohio Oil Co. v. Industrial Com., 293 Ill. 461.

[25] Conway Co. v. Industrial Board, 282 Ill. 313; Suburban Ice Co. v. Industrial Board, 274 Ill. 630, 14 N. C. C. A. 132, 777, 1080; Smith-Lohr Coal Co. v. Industrial Board, 279 Ill. 88; Heinze v. Industrial Commission, 288 Ill. 342; Moustgaard v. Industrial Commission, 287 Ill. 156; see *contra*, In re Simmons, 108 Atl. (Me.) 68, 17 N. C. C. A. 85.

[26] Chicago Rawhide Co. v. Industrial Commission, 291 Ill. 616.

[27] Swift & Co. v. Industrial Commission, 288 Ill. 132; Hydrox Chemical Co. v. Industrial Commission, 291 Ill. 579; Wabash Ry. Co. v. Industrial Commission, 286 Ill. 194; Hornbrook-Price Co. v. Stewart, 118 N. E. (Ind. App.) 315, 17 N. C. C. A. 81, 87; Texas Employers Insurance Assn. v. Mummey, 200 S. W. (Tex.) 251, 17 N. C. C. A. 81, 86, 94, 262, 266.

necessarily knowledge within the meaning of the statute.[28]

A workman was injured after working for eight days and as a result he was absent from work two or three weeks, and about eighteen months later he died from the effects of the accident. He gave no written notice of the accident. A man described as a clerk and cashier of the employer knew of the accident shortly after it occurred and visited the workman when he was ill at his home, paid him full wages when he was away (a strike was in progress), and appointed and paid a substitute for that period. It was held that the verbal notice to the cashier was notice to the employer and that the employer was not prejudiced in his defense by want of written notice of the accident. It was also held that the inability of the employer to give notice to their Insurance Company was irrelevant, as it did not *prejudice their defense* to the workman's claim. This would seem to be the proper rule under this section of the Illinois Act because the language is: "unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy."[29] A prejudice, in other words, to the employer's pocketbook is not such a prejudice as is contemplated by the language of this section, but it is a prejudice to his defense in the proceedings for compensation.[30]

Ignorance and inability to read or write and assuming that the foreman and doctor attending the injured man were looking out for his interests, there being no promise or assurance to that effect, is no excuse for failure to give notice.[31]

Physical inability of the injured workman himself to prepare and dispatch the notice of accident or claim is no excuse. The purpose of the requirement of notice is to

[28] In re Simmons, 103 Atl. (Me.) 68, 17 N. C. C. A. 85.

[29] Butt v. Colliery Co., (1909), 3 B. W. C. C. 44.

[30] Barker v. Holmes, (1904), 6 W. C. C. 52.

[31] In re Fells, 115 N. E. (Mass.) 430, 14 N. C. C. A. 783; see also In re Gorski, 116 N. E. (Mass.) 811, 16 N. C. C. A. 216, 809; Twonko v. Rome Brass & Copper Co., 120 N. E. (N. Y.) 638, 17 N. C. C. A. 81, 86, 94, 262, 266.

enable the employer to investigate claims made against him and do this when the matter is fresh in the minds of those who saw or knew of the accident and to prevent the pressing of stale and unfounded claims.[32]

It has been held, however, that if the employee, acting in good faith, relies upon the opinion of the employer's physician that the injury is slight and will have no permanent effect, he is excused from giving the required notice.[33]

The statutes sometimes authorize the supervising Board or Commission to excuse the giving of notice upon showing the facts justifying such excuse, and when failure to give notice may be excused it has been held that the giving of notice as soon as the incapacity develops is sufficient.[34]

The limitations as to notice, however, are generally held to run from the date of the accident and not from the time the injury develops.[35]

It has been held that proof of the employer's report of the accident is sufficient proof of notice to the employer of such accident.[36]

Mere insertion of a date of an alleged accident or date of notice in a blank application for compensation is no proof of the giving of such notice.[37]

A mere general finding by the Industrial Commission "that said defendant employer had knowledge or notice of the happening of said accident within the time prescribed by law" is a mere conclusion of the Commission

[32] Podkastelnea v. Michigan Central Ry. Co., 164 N. W. (Mich.) 418, 17 N. C. C. A. 166.

[33] Vandalia Coal Co. v. Holtz, 120 N. E. (Ind.) 386, 17 N. C. C. A. 88.

[34] Unity Drill Co. v. Bentley, 186 Pac. (Okla.) 239.

[35] Central Locomotive & Car Works v. Industrial Commission, 290 Ill. 436; Cook v. Holland Furnace Co., 200 Mich. 192, 17 N. C. C. A. 153, 784; In re McKenna, 103 Atl. (Me.) 69. *Contra*, Brown's Case, 228 Mass. 31; Johnasen v. Union Stock Yards Co., 99 Nebr. 328, 14 N. C. C. A. 351; Leadbetter v. Industrial Acc. Com., 171 Pac. (Cal.) 449.

[36] In re Mathewson, 116 N. E. (Mass.) 831, 17 N. C. C. A. 84; In re Brown, 116 N. E. (Mass.) 897, 17 N. C. C. A. 84; Reck v. Whittlesberger, 181 Mich. 463, 5 N. C. C. A. 917.

[37] Casparis v. Industrial Board, 278 Ill. 77, 15 N. C. C. A. 388, 390.

and not sufficient to justify a finding that such notice was given.[38]

Failure to give notice as an objection to the Commission's jurisdiction cannot first be made in the Circuit Court upon proceedings in review.[39]

§ 229. Claim for compensation. A mere notice of accident pursuant to the provisions of this section has been held not to amount to a claim for compensation.[40]

It has also been held that a notice of accident must be of such a character as to indicate to the employer that a claim for compensation under the Act is to be made on account of it.[41] But an application for arbitration has been held to be a claim for compensation which need not be preceded by any other kind of claim.[41a]

The provision of the statute with reference to making claim is distinct from that requiring notice of the accident, however, and it is a statute of limitation and must be strictly observed;[42] and this limitation affects not only the remedy of the injured party but his right as well.[43]

Under a statute creating a claim for death suffered in the course of employment, it is held that, inasmuch as the statute itself gives the right of action, the commencement of the action within the limit of time fixed by the Act is a condition which in all cases must be complied with; and that the right is given with the express condi-

[38] Smith v. Industrial Acc. Com., 162 Pac. (Cal.) 635, 14 N. C. C. A. 643.

[39] American Milling Co. v. Industrial Board, 279 Ill. 560, 18 N. C. C. A. 86; Mallory's Case, 120 N. E. (Mass.) 591, 17 N. C. C. A. 941.

[40] Perry v. Clements, (1901), 17 T. L. R. 524, 3 B. W. C. C. 56.

[41] Bushnell v. Industrial Board, 276 Ill. 262, 14 N. C. C. A. 654, 772. See also Fidelity & Casualty Co. v. Industrial Acc. Com., 170 Pac. (Cal.) 1112, 17 N. C. C. A. 158, 784.

[41a] Mississippi Power Co. v. Industrial Commission, 289 Ill. 353; Fraser v. Great Northern R. R. Co., (1901), 3 F. 908.

[42] Good v. City of Omaha, 168 N. W. (Nebr.) 629, 17 N. C. C. A. 84, 155.

[43] Schild v. Pere Marquette R. Co., 166 N. W. (Mich.) 1018, 17 N. C. C. A. 154; Haiselden v. Industrial Board, 275 Ill. 114, 14 N. C. C. A. 779; Curtis v. Slater Construction Co., 160 N. W. (Mich.) 659, 14 N. C. C. A. 662, 785; Hunt v. Industrial Acc. Com., 185 Pac. (Cal.) 215.

tion that it must be enforced within the definite time fixed by the statute.[44]

A written claim for compensation, however, is not required by the provisions of Section 24 of the Illinois Act except in those cases where payments have been made under the Act; and in all other cases an oral claim for compensation is sufficient.[45] But a statement by the injured employee that he would have to make a claim if he did not get better is not a compliance with the statute requiring a claim to be made within six months.[46] And a finding of the Commission that the employee "probably" said he wanted pay for an injury is not sufficient to sustain an award, as this is a mere guess and legal liability cannot be predicated on guess or probability;[47] but it has been held that such claim need not specify in advance the amount claimed.[48]

A claim made against a partnership, in the partnership name, is a valid claim against the partners individually. A partnership is not a legal entity separate and distinct from the partners composing it.[49]

Section 24 of the Illinois Act requiring written claim for compensation to be made within six months after payments have ceased, applies only where there is a continuance of disability beyond the time for which compensation has been agreed upon or awarded and the provision is wholly for the benefit of the employee.[50]

Where the statute provides in general terms that where a workman is mentally incompetent or a minor at the time when any right, privilege or election accrues to him under the Act, his guardian may, in his behalf, claim and

[44] Hartray v. Chicago Rys. Co., 290 Ill. 85.

[45] Heinze v. Industrial Commission, 288 Ill. 342; Suburban Ice Co. v. Industrial Board, 274 Ill. 630, 14 N. C. C. A. 132, 777, 1080; Moustgaard v. Industrial Commission, 287 Ill. 156; Smith-Lohr Coal Co. v. Industrial Board, 279 Ill. 89.

[46] Baase v. Banner Coal Co., 167 N. W. (Mich.) 954, 17 N. C. C. A. 160.

[47] Rubin v. Fisher Body Corp., 172 N. W. (Mich.) 534.

[48] Thompson v. Goold & Co., (1910), A. C. 409, 3 B. W. C. C. 394.

[49] Heinze v. Industrial Commission, 288 Ill. 342.

[50] Arnold & Murdock Co. v. Industrial Board, 277 Ill. 295, 15 N. C. C. A. 383.

exercise such right, it is held that the limitation for making such a claim does not run during such period of incapacity or minority.[51] And it is generally held that the limitation as to time of notice or for making claim does not run until the removal of any mental incapacity which may result from the accident.[52] And while notice of the accident may be excused under certain circumstances, depending upon the provisions of the statute and the degree of discretion vested in the supervising commission, or the court, etc., according to the weight of authority, the claim for compensation must be made strictly in accordance with the terms of the statute.[53] And neither ignorance of the law nor absence from the country constitute a reasonable cause for failure to make the claim seasonably.[54] And it has also been held that inability to read or write and assuming that the foreman and doctor attending the injured man were looking after his interests, there being no promise or assurance to that effect, do not constitute an excuse for failure to make a claim according to the statute.[55] And filing of the claim will not be excused by representations of an employer that he will take care of the injured man, or words to that effect, unless such representations amount to an estoppel.[56]

Where the supervising board is given authority to determine whether there is reasonable ground for delay in prosecuting a claim, its decision upon the question is conclusive upon the parties.[57]

Neither the date of mailing or posting of an application for claim, nor the date when, in due course, it should have reached the Compensation Commission, can be

51 Minturn v. Proctor & Gamble Mfg. Co., 172 Pac. (Kas.) 17, 17 N. C. C. A. 171.

52 Simon v. Cathroe Co., 162 N. W. (Nebr.) 633, 14 N. C. C. A. 771.

53 Smith v. Solvay Process Co., 163 Pac. (Kas.) 635, 14 N. C. C. A. 655, 782.

54 In re Gorski, 116 N. E. (Mass.) 811, 16 N. C. C. A. 216, 809; Twonko v. Rome Brass & Copper Co., 120 N. E. (N. Y.) 638, 17 N. C. C. A. 86, 172.

55 In re Fells, 115 N. E. (Mass.) 430, 14 N. C. C. A. 783.

56 Degaglio v. Bradley Contracting Co., 171 N. Y. Supp. 679, 17 N. C. C. A. 161.

57 Kemper v. Industrial Acc. Com., 171 Pac. (Cal.) 426.

treated as the day of the filing of the application for claim in order to bring it within the provision of the statute although the delay may have been due to the existence of a state of war.[58]

The person making claim for compensation must make it in the capacity in which he is entitled to recover. If one claims compensation as a widow, she must make her claim as a widow of the deceased workman and she cannot rely upon some claim made by the injured man prior to his death.[59]

§ 230. Six months' limitation. The word "month" probably means calendar month, in which case the last day for claiming compensation or giving notice would be that day in the sixth month which corresponds in number to the day of the month on which the accident happened, it being held that the day from which the reckoning is made should be excluded.[60] And it was held under the English Act that if the sixth month contained no such corresponding day, then the last day of that month will terminate the period.[61] Even though the accident happens at an early hour of the day, notice may be given or the claim made on the corresponding day six months later at any time during that day.[62]

In the absence of language of the statute indicating that the time shall run from the date of the manifestation of the injury resulting from the accident, the time of the accident, rather than the date the injury develops, is the time when the limitation begins to run; and proceedings may not be brought, therefore, unless claim has been made for compensation within six months after the accident. The language of the Illinois Act, both as to notice and making of claim, is "after the accident," and the statute, therefore, begins to run from the date of the

[58] Poccardi v. Ott, 98 S. E. (W. Va.) 69, 16 N. C. C. A. 217.

[59] Curtis v. Slater Construction Co., 168 N. W. (Mich.) 958, 14 N. C. C. A. 662, 785.

[60] Hudspith v. Pierce Arrow Motor Car Co., 167 N. Y. Supp. 418, 17 N. C. C. A. 155.

[61] Mignotti v. Colvill, (1879), 4 C. P. D. 233.

[62] Peggie v. Wemyss Coal Co., (1910), S. C. 93.

accident rather than from the date of the development of the disability.[63]

In view of this language of the Illinois Act, it has been said by the Supreme Court of Illinois that the language of the statute does not permit extending the time to await the development of the injury.[64]

Due proof of a claim for compensation is jurisdictional of a proceeding for compensation, and the statutory notice of such claim is a part of the claimant's case in chief and the burden is upon him to prove it and in the absence of such proof the Commission is without jurisdiction.[65]

It has been held that the physical inability of the injured workman to personally prepare and dispatch a notice of claim is no excuse for the failure to make a claim within the period of limitation.[66] The limitation is not retroactive.[67]

The Commission would seem to have jurisdiction to inquire whether there were any facts or circumstances in the case, such as payment of partial compensation, which would estop the employer from making the defense that no claim had been properly made or notice filed, so that it would seem that the limitation of the statute is not absolute.[68]

The burden of proving that the claim was made in all

[63] Central Locomotive & Car Works v. Industrial Commission, 290 Ill. 436; Bushnell v. Industrial Board, 276 Ill. 262, 14 N. C. C. A. 654, 772; Haiselden v. Industrial Board, 275 Ill. 114, 14 N. C. C. A. 779; Casparis v. Industrial Board, 278 Ill. 77, 83, 15 N. C. C. A. 388, 390; In re McCaskey, 117 N. E. (Ind. App.) 268, 15 N. C. C. A. 113; Employers Credit Co. v. Industrial Acc. Com., 169 Pac. (Cal.) 1001, 17 N. C. C. A. 81, 169; Peterson v. Fisher Body Co., 167 N. W. (Mich.) 987, 17 N. C. C. A. 163, Podkastelnea v. Michigan Central Ry. Co., 164 N. W. (Mich.) 418, 17 N. C. C. A. 166; see also 17 N. C. C. A. 784.

[64] Central Locomotive & Car Works v. Industrial Commission, 290 Ill. 436.

[65] Bushnell v. Industrial Board, 276 Ill. 262, 14 N. C. C. A. 654, 772; Prokopiak v. Buffalo Gas Co., 162 N. Y. Supp. 288, 14 N. C. C. A. 128, 665; *contra*, Illingworth v. Walmsley, (1900), 2 Q. B. 142, 2 W. C. C. 118.

[66] Podastelnea v. Michigan Central Ry. Co., 164 N. W. (Mich.) 418, 17 N. C. C. A. 166.

[67] State ex rel. v. District Court, 164 N. W. (Minn.) 812.

[68] Wright v. Bagnall & Sons, (1900), 2 Q. B. 240, 2 W. C. C. 36; Lee v. Cortonwood, (1901), 4 W. C. C. 32.

respects in accordance with the statute rests in the first instance upon the person claiming the compensation.[69]

However, unless the defense of want of notice or claim is made before the Industrial Commission in a hearing which is brought before it within the six months' limitation, such limitation will be held to be waived.[70]

§ 231. Eighteen months' limitation. Section 24 of the Illinois Act has been held not to apply to proceedings under Section 19 (h) of the Act in regard to a recurrence, an increase or decrease of the disability.[71] And if the employee returns to the employment of the same employer in whose service he was injured, he is not deprived of his right to recover for his injury for failure to give written notice within six months after the accident, but he may give such notice at any time within eighteen months; and, in case of his death, his dependents may give such notice at any time within eighteen months after such death.[72] This provision fixing the limitation at eighteen months is intended to prevent any advantage being taken of the employee by reason of the employment relation which he resumes with his employer,[73] but it does not create any rights which did not exist at the time of the return to work. It merely extends the time within which the employer's rights may be enforced.[74] If, therefore, at the time the injured man returned to work his claim was barred, by failure to make any claim within six months, in accordance with the provisions of Section 24, his right to make such claim is not restored to him by the eighteen months' limitation.[75]

It is held that this provision giving employees who

[69] Bushnell v. Industrial Board, 276 Ill. 262, 14 N. C. C. A. 654, 772; Roberts v. Chrystal Palace F. Club, (1909), 3 B. W. C. C. 51.

[70] Meyer v. Industrial Commission, 286 Ill. 642; Storrs v. Industrial Commission, 285 Ill. 595.

[71] Arnold & Murdock Co. v. Industrial Board, 277 Ill. 295, 15 N. C. C. A. 383.

[72] See § 8 (d); Bowman v. Industrial Commission, 289 Ill. 126; Otis Elevator Co. v. Industrial Commission, 288 Ill. 396.

[73] Otis Elevator Co. v. Industrial Commission, 288 Ill. 396.

[74] Ohio Oil Co. v. Industrial Com., 293 Ill. 461.

[75] *Ibid.*

return to the employment of the employer with whom they were engaged prior to the injury, the right to make claim within eighteen months, and the provisions of Section 24 requiring all other injured employees to make claim within six months, do not amount to a denial of equal protection of the laws, as the circumstances of the employee who does not return to his employment are not the same as those of the employee who does return.[76]

[76] Otis Elevator Co. v. Industrial Commission, 288 Ill. 396.

CHAPTER XVIII

INSURANCE AND DISCHARGE OF COMPENSATION LIABILITY

Secs. 25 and 26 of the Illinois Act

§ 25. Any employer against whom liability may exist for compensation under this Act, may, with the approval of the Industrial Board, be relieved therefrom by:

(a) Depositing the commuted value of the total unpaid compensation for which such liability exists, computed at three percentum per annum in the same manner as provided in Section 9, with the state treasurer, or county treasurer in the county where the accident happened, or with any State or National bank or trust company doing business in this State, or in some other suitable depository approved by the Industrial Board: *Provided,* that any such depository to which such compensation may be paid shall pay the same out in installments as in this Act provided, unless such sum is ordered paid in, and is commuted to, a lump sum payment in accordance with the provisions of this Act.

(b) By the purchase of an annuity, in an amount of compensation due or computed, under this Act within the limitation provided by law, in any insurance company granting annuities and licensed or permitted to do business in this State, which may be designated by the employer, or the Industrial Board.

§ 26. (a) Any employer who shall come

Secs. 25 and 26 of the Illinois Act

within the provisions of Section 3 of this Act, and any other employer who shall elect to provide and pay the compensation provided for in this Act shall:

(1) File with the Commission a sworn statement showing his financial ability to pay the compensation provided for in this Act, or

(2) Furnish security, indemnity or a bond guaranteeing the payment by the employer of the compensation provided for in this Act, or

(3) Insure to a reasonable amount his liability to pay such compensation in some corporation or organization authorized, licensed or permitted to do such insurance business in this State, or

(4) Make some other provisions for the securing of the payment of compensation provided for in this Act, and

(5) Upon becoming subject to this Act and thereafter as often as the Commission may in writing demand, file with the Commission in form prescribed by it evidence of his compliance with the provisions of this paragraph.

(b) The sworn statement of financial ability, or security, indemnity or bond, or amount of insurance, or other provisions, filed, furnished, carried, or made by the employer, as the case may be, shall be subject to the approval of the Commission, upon the approval of which, the Commission shall send to the employer written notice of its approval thereof. The filing with the Commission of evidence of compliance with Paragraph (a) of this section as therein provided shall constitute such compliance until ten days after written notice to the employer of the disapproval by the Commission.

(c) Whenever the Industrial Commission shall find that any corporation, company, association, aggregation of individuals, or other insurer affecting workmen's compensation insurance in

Secs. 25 and 26 of the Illinois Act

this State shall be insolvent, financially unsound, or unable to fully meet all payments and liabilities assumed or to be assumed for compensation insurance in this State, or shall practice a policy of delay or unfairness toward employees in the adjustment, settlement, or payment of benefits due such employees, the said Industrial Commission may after reasonable notice and hearing order and direct that such corporation, company, association, aggregation of individuals, or insurer, shall from and after a date fixed in such order discontinue the writing of any such workmen's compensation insurance in this State. Subject to such modification of said order as the Commission may later make on review of said order, as herein provided, it shall thereupon be unlawful for any such corporation, company, association, aggregation of individuals, or insurer to effect any workmen's compensation insurance in this State. Any such order made by said Industrial Commission shall be subject to review by the courts, as in the case of other orders of said Industrial Commission, provided that upon said review the Circuit Court shall have power to review all questions of fact as well as of law.

(d) The failure or neglect of an employer to comply with the provisions of Paragraph (a) of this section shall be deemed a misdemeanor punishable by a fine equal to ten cents per each employee of such employer, at the time of such failure or neglect, but not less than one dollar nor more than fifty dollars, for each day of such refusal or neglect until the same ceases. Each day of such refusal or neglect shall constitute a separate offense.

§ 232. Employer's personal liability discharged. Following in part, the precedent established by the English Act, Section 25 of the Illinois Act provides a means for the employer to discharge his individual liability to an

injured workman, or his dependents, by depositing the commuted value of the compensation, with a designated depository, or by purchasing an annuity in a like amount, in any approved insurance company. The English Act permits the employer to rid himself of his personal liability in cases of continuing compensation, by the purchase of an annuity from the Post Office Savings Bank. It would seem that this alternative is seldom utilized by the English employers.[1]

An employer, who, under a compensation law, is liable at any moment for an unforeseen sum of money, should not only be able to anticipate and meet in whole or in part the contingency by some method of insurance, but also to discharge his individual liability in cases where the exigencies of his business require it.

§ 233. Compensation insured. As a corollary to this right of the employer, the workman and his dependents have a right to the assurance of the State, so far as it may reasonably be provided, that the compensation due and to become due, shall not be lost, because of later business reverses, or other subsequent causes for which such beneficiaries are in no wise responsible, and which should not be permitted to interfere with the vested prior rights to such compensation. Following the provisions of the French Act, it is therefore provided by Section 26, of the Illinois Act, that the employer upon written demand of the Industrial Board, shall furnish a sworn statement of financial ability to pay, give a bond, take out insurance, or make some other suitable provision for insuring to the workman or his dependents, the compensation due or to become due. In France the employer may be released from a whole or a part of the cost, by satisfying the authorities that he has insured his workmen in an approved mutual association.[2] Further guaranties are provided through the National Old Age Pension Fund.[3] Similar provisions are made in the laws of other states and foreign countries.

[1] See Sir Edward Brabrook, VIII *Congres des Assurances Sociales*, Rome, 1908, p. 382.

[2] §§ 5 and 6.

[3] Art. 24.

This requirement as to adequate security for the payment of compensation is mandatory and not merely permissive.[4] And if the Commission acts reasonably, in view of the size of the employer's business, in demanding the security required by the statute, for the protection of the injured employees' compensation, its discretion will not be interfered with by the courts.[5]

It has been held, however, that the compensation due the injured workman is the primary liability of the employer, and in case of default or insolvency of the insurer the employer will not be relieved from liability.[6]

It will be observed that the injured employer or his dependents are not specifically given the right to call upon the employer to guarantee the payment of compensation in any of the methods fixed by the statute. The authority is given to the Industrial Board only. It is to be assumed, however, that the Board, upon a proper showing that the compensation due or to become due, was in danger of being lost to the beneficiary, would make the demand provided for by the statute, upon the employer personally liable for such compensation.

[4] Industrial Commission of Utah v. Daly Min. Co., 172 Pac. (Utah) 301.

[5] Bank of Los Banos v. Industrial Accident Commission, 183 Pac. (Cal.) 538.

[6] American Fuel Co. v. Industrial Commission, 187 Pac. (Utah) 633.

CHAPTER XIX

EXISTING INSURANCE SYSTEMS

Sec. 27 of the Illinois Act

§ 27. (a) This Act shall not affect or disturb the continuance of any existing insurance, mutual aid, benefit or relief association or department, whether maintained in whole or in part by the employer or whether maintained by the employees, the payment of benefits of such association or department being guaranteed by the employer or by some person, firm or corporation for him: *Provided,* the employer contributes to such association or department an amount not less than the full compensation herein provided, exclusive of the cost of the maintenance of such association or department and without any expense to the employee. This Act shall not prevent the organization and maintaining under the insurance laws of this State and of any benefit or insurance company for the purpose of insuring against the compensation provided for in this Act, the expense of which is maintained by the employer. This Act shall not prevent the organization or maintaining under the insurance laws of this State of any voluntary mutual aid, benefit or relief association among employees for the payment of additional accident or sick benefits.

Sec. 27 of the Illinois Act

(b) No existing insurance, mutual aid, benefit or relief association or department shall, by reason of anything herein contained be authorized to discontinue its operation without first discharging its obligations to any and all persons carrying insurance in the same or entitled to relief or benefits therein.

(c) Any contract, oral, written or implied, of employment providing for relief benefit, or insurance or any other device whereby the employee is required to pay any premium or premiums for insurance against the compensation provided for in this Act shall be null and void, and any employer withholding from the wages of any employee any amount for the purpose of paying any such premium shall be guilty of a misdemeanor and punishable by a fine of not less than ten dollars nor more than one thousand dollars, or imprisonment in the county jail for not more than six months, or both, in the discretion of the court.

§ 234. Illinois law not an insurance act. Unlike the compensation laws of Washington, Ohio and West Virginia, and to a less degree, the statutes of other states, the Illinois Compensation Act is not an industrial insurance act in any proper sense. Beyond the provisions of Sections 25 and 26 [1] the whole subject of insurance is left to the employer, and even the requirements imposed upon the employer by Section 26 of the Act, offer him several alternatives, either of which he may adopt, at his pleasure, so long as the compensation is reasonably assured to the persons entitled to it.

State insurance is un-American in principle, it removes the strongest incentive of the employer to provide a safe place for his men to work, it places vast sums of money in the hands of political appointees, always more or less irresponsible, who are often given wide

[1] *Ante*, Chap. XVII.

powers of classification of trades, assessment of premiums, etc., and its greatest and most inherent vice is that it burdens the careful employer with at least a portion of the liability of the careless employer, because all in the same class of industry are charged the same rates for insurance.

Compulsory insurance is the rule, however, in many foreign states, where the people are accustomed to paternalism and disciplined to bureaucracy. Workmen "are insured" in Germany; "must be insured" in Italy; "shall be insured" in Austria, the Netherlands and Norway, and are "subject to compulsory insurance" in Hungary. In such states alone, do we find workmen's insurance thoroughly exemplified.

It would seem that the spirit of individualism, which the whole history of this nation, and the circumstances of its origin have done so much to create and encourage, would be slow to accept the definite paternalism involved in the State insurance scheme.

§ 235. Existing insurance plans. It is obvious that the purpose of Subdivision (a) of this section, is to permit the continuance and operation of such insurance, benefit and relief associations as have become more or less common, in many of the larger industries, for the purpose of making definite provision for the injured employees and their dependents. The compensation law does not effect any such systems, *provided* they are supported entirely by the employer, and not the injured workman, or his dependents, the same amount of compensation fixed in this law. Such benefit and relief plans are definitely recognized as being in accord with the principles of the compensation law, in that the latter expressly provides that such associations may hereafter be formed for the purpose of insuring to the injured workman, or his dependents, the same measure of compensation provided in the Act.

The penalties imposed by Subdivision (c) of this section, do not, of course, relieve any employer from his civil obligations under the Act.[2]

[2] Gibson v. Dunkerly Bros., (1910), 102 L. T. 587, 3 B. W. C.

§ 236. Miscellaneous insurance cases. While the Industrial Commission may have authority under the statute to require insurance coverage and determine whether a policy of insurance is in existence, these questions must be determined in accordance with recognized principles of law.[3] For example, an assignment of an insurance policy contrary to the terms of the policy will not be effective as against the insurance company, even though approved by the Industrial Commission, because the Commission by its order cannot change the legal effect of such a transaction.[4]

Coverage. If the remuneration of an employee is not included in the payroll as a basis for the premium charge, it is unjust to the insurance company to require payment of compensation to such an employee.[5] But it has been held that an insurance company cannot escape liability in a compensation case because the particular employment of the workman is not accurately covered by the schedule in the policy.[6]

In a Maryland case it was held that an insurance company which was compelled to pay an award to one held to be an employee of the assured, although not covered by assured's declaration in the application for insurance, might recover from the assured the amount it was required to pay such employee. The Court said there were two distinct obligations upon the insurance company—one to secure payment of compensation to the employee, and the other to indemnify the employer against loss for the liability imposed upon him by law, and that, while the company could not rely upon the statements of the employer in the items of his declaration applying for the insurance so far as they affect the right of the employee or his dependents to recover compensation, he is not prevented from requiring the

C. 347; see also Chicago Rys. Co. v. Industrial Board, 276 Ill. 112.

[3] Kolb v. Brummer, 173 N. Y. Supp. 72.

[4] *Ibid.*

[5] Cashman's Case, 120 N. E. (Mass.) 78.

[6] State ex rel. London & Lancashire Indemnity Co. v. District Court of Hennepin County, 170 N. W. (Minn.) 218, 17 N. C. C. A. 790.

employer to live up to declarations and the terms of the policy insofar as to rights existing between them are concerned.[7]

It has been held that an insurance policy covering the operation of a trade, business or work of the employer described in the policy cannot cover injuries suffered by a chauffeur driving an automobile of the employer away from the place of business of the employer.[8]

It has been held that "general farm work, excluding the operation of farm machinery" in an insurance policy did not exclude one helping the engineer of a caterpillar engine pulling a harrow, the workman himself not operating the engine.[9]

Where contractors in an application for an insurance policy stated they did not "operate a steam railroad switch or other track in connection with the risk" and it appeared they used "dinkey" steam locomotives drawing dump cars upon tracks made of steel rails and wooden ties, which facts were unknown to the insurer, the statement was a misrepresentation of a material fact and voided the policy.[10]

It has been held that excess premiums cannot be recovered from a superintendent of a building because of an increase in the cost of construction over the original estimates, where his name was inserted with the owner's as one of the assureds.[11]

Where the insurance carrier claims to have cancelled the insurance and that another company accepted the risk prior to the accident, but no notice of cancellation was given the Board, it was held that the latter need not go beyond its own records to determine whether the policy was still in force and could hold the original insurer to pay the compensation.[12]

7 United States Fidelity & Guaranty Co. v. Taylor, 104 Atl. (Md.) 171.

8 Western Indemnity Co. v. Industrial Acc. Com., 185 Pac. (Cal.) 306.

9 Maryland Casualty Co. v. Industrial Acc. Com., 173 Pac. (Cal.) 993.

10 In re McCullough, 162 N. W. (Minn.) 894.

11 Standard Accident Ins. Co. v. Fischel, 163 N. Y. Supp. 92.

12 Hargraves v. Shevlin Mfg. Co., 165 N. Y. Supp. 960, 15 N. C. C. A. 774.

Where an insurance policy is cancelled for non-payment of premium, an acceptance of part of the premium thereafter was held not to make the company liable for an injury which occurred after the cancellation, as in such case the assured was merely paying for part of his indebtedness at the time of the cancellation.[13]

An insurance policy ordered for a company but by mistake issued to one of the individuals in the company may be reformed so as to permit the making of a claim for compensation by an injured employee.[14]

The extent of the insurance or indemnity coverage is often considered in determining the employer's liability for compensation to his injured workmen.[15]

Direct Liability. It was held under the former provisions of the Illinois Act, making the insurance carrier liable in case of the insolvency of the employer, that a person claiming compensation might sue the insurance company direct upon proof of insolvency, regardless of a provision in the policy that the company should be liable only to reimburse the assured.[16]

It has been held in Iowa that the obligation of the insurance carrier in its Workmen's Compensation Policy is a direct liability to the employee, and that the employee may sue the insurance company direct without proof of insolvency of the employer.[17]

Under the Indiana Act (Sections 73, 74, 75), which makes the insurer equally liable with the employer, and provides for waiver of notice to the insurance carrier, it has been held that the medical service rendered beyond the statutory requirements, if approved by the employer, may be collected from the insurer on the principle that the latter stands in the place of the former.[18]

[13] Skoozlois v. Vincour, 166 N. Y. Supp. 1004, 15 N. C. C. A. 765.

[14] Komula v. General Accident F. & L. Ins. Corp., Ltd., 162 N. W. (Wis.) 919, 15 N. C. C. A. 487, 770, 773.

[15] Kauri v. Messner et al., 164 N. W. (Mich.) 537, 17 N. C. C. A. 466.

[16] Illinois Indemnity Exchange v. Industrial Commission, 289 Ill. 233.

[17] Abel v. Casualty Company of America, 175 N. W. (Iowa) 846.

[18] In re Kelly, 116 N. E. (Ind. App.) 306; Kirkoff Bros., etc., v. McCool, 116 N. E. (Ind. App.) 439, 15 N. C. C. A. 120, 128.

But it is held in New York that failure to give notice of the accident may prejudice the rights of the insurance carrier, even though it is excused so far as the employer is concerned.[19]

Subrogation. In an action by an employer against a third person, whose negligence caused the death of an employee, evidence that the employer had caused his employees to be insured, and that the compensation awarded the personal representatives of the deceased had been paid by the insurance company, was held not admissible, as such insurance was not for the benefit of the defendant in such suit.[20]

In Texas it is held that the insurance carrier has no right of subrogation against a negligent third person causing the injury.[21]

But in Massachusetts and Iowa it is held that if compensation was accepted the right of action is subrogated to the insurance carrier and the insurer's rights to recover are the same as the rights which the deceased might have had if he had survived.[22]

Parties. In Indiana it has been held not necessary to give an insurance company notice of application for a lump sum settlement of compensation.[23] But in the same state it has been held that in all compensation proceedings the insurance carrier is a proper party where its interests are legally to be affected by reason of its obligations under its policy, and that where an insurance carrier seasonably petitions to be admitted as a party to any such proceedings, it will be admitted and heard.[24]

It has been held that an insurance carrier cannot appeal to the courts for review unless it intervenes and becomes a party to the proceedings below.[25]

19 Sicardi v. Sarnoff Hat Co., 162 N. Y. Supp. 337, 14 N. C. C. A. 665.

20 Vose v. Central Illinois Public Service Co., 286 Ill. 519.

21 City of Austin v. Johnson, 204 S. W. (Tex.) 1181.

22 Labuff v. Worcester Consolidated Street Ry. Co., 120 N. E. (Mass.) 381; Fidelity & Casualty Co. v. Cedar Valley Electric Co., 174 N. W. (Iowa) 709.

23 Hartsock et al. v. Long et al., 124 N. E. (Ind. App.) 509.

24 Aetna Life Ins. Co. v. Shiveley, 121 N. E. (Ind. App.) 50.

25 Bolden v. Greer, 101 Alt. (Pa.)

After an insurance company assumes the defense of a case, it cannot relieve itself from liability by an unwarranted withdrawal from the case, and an agreement by the assured to prosecute the claim for the injured employee is not such improper conduct as to justify the insurance carrier in withdrawing from the defense.[26]

An insurance company making payments of compensation acts as the agent for the employer.[27]

If an insurance carrier insists upon the appointment of an administrator so that compensation may be paid to him, it has been held that it may be required to pay the reasonable expenses connected with such appointment where there is no other estate and no other reason for the appointment of the administrator.[28]

Illegal Employments, Etc. In the absence of waiver or estoppel, the insurance company is not liable for an accident to a minor illegally employed if the policy covers only employees legally employed.[29] And it was held in Massachusetts that where an agreement was made by the insurance company and the dependents of an employee engaged in maritime service and payments were made for a certain period, and it was afterwards decided by the Supreme Court of the United States in a similar case that the State Compensation Act did not apply to maritime cases, a recovery could not be had on the agreement between the insurance company and the dependents.[30]

State Insurance Funds. An order by a State Insurance Fund that all self insurers and mutual insurers shall pay into a State Fund the present value of awards for death claims has been held discriminatory and void;[31] but the compulsory requirement as to pay-

816, 15 N. C. C. A. 774; Dempsey's Case, 120 N. E. (Mass.) 75. But see Pac. Post Casualty Co. v. Industrial Acc. Com., 167 Pac. (Cal.) 539, 16 N. C. C. A. 552.

[26] Standard Printing Co. v. Fidelity & Deposit Co. of Maryland, 164 N. W. (Minn.) 1022.

[27] Stephens Engineering Co. v. Industrial Commission, 290 Ill. 88.

[28] Mellons Estate, 121 N. E. (Mass.) 18, 17 N. C. C. A. 1063.

[29] Maryland Casualty Co. v. Industrial Acc. Com., 178 Pac. (Cal.) 858.

[30] Sterling v. London G. & A. Co., Ltd., 124 N. E. (Mass.) 286.

[31] Sperento v. New York City

ment of premiums into a state insurance fund has been held to be constitutional.[32]

Under the power given in the statute to revoke its consent for the employer to carry his own insurance, it has been held not sufficient ground for cancellation of such authority that the employer contested an order of the Commission awarding compensation.[33]

Inter-Borough Ry. Co., 173 N. Y. Supp. 834.

[32] Nevada Industrial Commission v. Washoe County, 171 Pac. (Nev.) 511.

[33] State Industrial Commission v. Yonkers R. Co., 173 N. Y. Supp. 858.

CHAPTER XX

DIRECT LIABILITY OF INSURANCE CARRIERS

Sec. 28 of the Illinois Act

§ 28. In the event the employer does not pay the compensation for which he is liable, then an insurance company, association or insurer which may have insured such employer against such liability shall become primarily liable to pay to the employee, his personal representative or beneficiary the compensation required by the provisions of this Act to be paid by such employer. The insurance carrier may be made a party to the proceedings to which the employer is a party and an award may be entered jointly against the employer and the insurance carrier. [Amended by Act approved June 28, 1919.

§ 237. Direct liability of insurance carriers. This Section of the Illinois Act creates a direct liability on the part of the insurance carrier in case the employer does not pay the compensation for which he is liable, and provides that such insurance carrier may be made a party to the proceedings, to which the employer is a party, and an award entered jointly against both employer and insurance carrier. This is an additional safeguard provided by the legislature to insure to the injured workmen and their dependents, full payment of all compensation claims, and provisions of this character are common in compensation laws, and where this additional liability has been created by statute it has

uniformly been sustained and enforced.[1] And it has been held that such direct liability of the insurance carrier may be enforced even though the insurance policy issued by the company to the insured provides only for reimbursement of the employer for actual compensation paid by him.[2]

It has been held, however, that unless the insurance carrier is given "immediate notice" of the accident, in accordance with the terms of the policy, it is not liable to the insured or the workman, even though the delay was due to an honest mistake.[3]

But an insurance carrier, which receives and retains the premiums upon its policy of insurance cannot be heard to say that it should not be called upon to pay the compensation claim, on the ground that the insured did not or could not engage in any business covered by the Act.[4] And an assignment for the benefit of creditors by the employer does not relieve the insurance company of its liability, on the ground that the men killed have ceased to be employees of the insured employer making the assignment.[5]

The direct liability here provided would seem to be in accord with the evident spirit of the Act, and the general principles of the equitable doctrine of subrogation. The whole doctrine of subrogation rests upon equitable considerations and principles. The purpose, at last, is to make that thing or person bear a common burden which or who ought in equity or good conscience, to bear it primarily, in relief or ease of another, only secondarily liable as between the two. Therefore it is that generally whenever a security is given by the principal debtor, either to the surety or to the common

[1] Illinois Indemnity Exchange v. Industrial Commission, 289 Ill. 233; Adel v. Casualty Co. of Am., 175 N. W. (Iowa) 846; Fidelity & Casualty Co. v. House, 191 S. W. (Tex.) 155, 15 N. C. C. A. 772; In re Kelly (Ind. App.), 116 N. E. 306, 15 N. C. C. A. 120; Craig v. Royal Ins. Co., 8 B. W. C. C. 339.

[2] Illinois Indemnity Exchange v. Industrial Commission, 289 Ill. 233.

[3] Sherwood Ice Co. v. U. S. Casualty Co., 100 Atl. (R. I.) 573.

[4] Uhl v. Hartwood Club, 163 N. Y. Supp. 744, 15 N. C. C. A. 771.

[5] U. S. Fidelity & Guar. Co. v. Industrial Accident Commission, 163 Pac. (Cal.) 1013, 14 N. C. C. A. 429; 15 *Id.* 150, 271, 457.

creditor, for the payment of a debt, a court of equity will lay hold of it as a trust for the security of the debt, and will so execute the trust that the debt be paid.[6]

The person entitled to compensation is treated by the statute as a creditor, and the insurance policy of the insuring company is given as security for the payment of the creditor's claim, and it seems wholly in accord with the equitable principles of subrogation as above stated, that the insurance contract should be laid hold of for the purpose of paying the creditor, in case the employer, neglects or is unable to meet the obligation. In the absence of this definite provision of the statute, however, the injured employee would have no direct claim against an insurance company insuring the employer's liability.[7]

§ 238. Extent and limitation of the liability. In accordance with the general doctrine of subrogation, that the subrogee takes the claim, subject to all its disqualifications and limitations, and can acquire no greater rights than the creditor had, on the ground that the surety cannot be placed in a more favorable condition than the principal, it is evident that the person entitled under this section, to proceed against the insurance company, would be limited strictly to the rights of the employer, under the contract of insurance, and could have no other relief than such contract afforded him.[8]

There is no authority given in the statute to proceed against the insurance carrier except in case of default by the employer in the payment of compensation. Where proceedings are instituted to enforce the compensation liability, it is provided that the insurance carrier may be made a party, which provision gives the right to make the insurance carrier a party in all cases where proceedings are started, but in such case author-

[6] Colt v. Barnes, 64 Ala. 108, 126.

[7] Kinnon v. Fidelity, etc., Co., 107 Ill. App. 406, 10 Ill. Notes, p. 660, § 207; see also Disourdi v. Sullivan Group Min. Co., 15 B. C. 305; also extensive note on the rights of injured employees against insurance companies insuring the employer's liability, in A. A. C. 1912 C. 155; 24 Am. & Eng. A. C. 155.

[8] 37 Cyc. 429.

ity is given for a joint award only, and not against the insurance carrier alone.

The insurance company has generally no right to an injunction to restrain collection of an award, where it has a legal defense to an action to collect it.[9]

[9] The Cascade, 241 Fed. 206. See additional insurance cases, *ante*, § 236.

CHAPTER XXI

LIABILITY OF THIRD PERSON AS TORT FEASOR

Sec. 29 of the Illinois Act

§ 29. Where an injury or death for which compensation is payable by the employer under this Act, was not proximately caused by the negligence of the employer or his employees, and was caused under circumstances creating a legal liability for damages in some person other than the employer to pay damages, such other person having also elected to be bound by this Act, or being bound thereby under section three (3) of this Act, then the right of the employee or personal representative to recover against such other person shall be subrogated to his employer and such employer may bring legal proceedings against such other person to recover the damages sustained in an amount not exceeding the aggregate amount of compensation payable under this Act, by reason of the injury or death of such employee. Where the injury or death for which compensation is payable under this Act, was not proximately caused by the negligence of the employer or his employees and was caused under circumstances creating a legal liability for damages on the part of some person other than the employer to pay damages, such other person having elected not to be bound by this Act, then legal proceedings may be taken against such other person to recover damages notwithstanding such employer's payment of or liability to pay compensation under this Act, but

Sec. 29 of the Illinois Act

in such case if the action against such other person is brought by the injured employee or his personal representative and judgment is obtained and paid, or settlement is made with such other person, either with or without suit, then from the amount received by such employee or personal representative there shall be paid to the employer the amount of compensation paid or to be paid by him to such employee or his personal representative: *Provided,* that if the injured employee or his personal representative shall agree to receive compensation from the employer or to institute proceedings to recover the same or accept from the employer any payment on account of such compensation, such employer shall be subrogated to all the rights of such employee or personal representative and may maintain, or in case an action has already been instituted, may continue an action either in the name of the employee or personal representative or in his own name against such other person for the recovery of damages to which but for this section the said employee or personal representative would be entitled, but such employer shall nevertheless pay over to the injured employee or personal representative, all sums collected from such other person by judgment or otherwise in excess of the amount of such compensation paid or to be paid under this Act, and all costs, attorneys' fees and reasonable expenses incurred by such employer in making such collection and enforcing such liability. [Amended by Act approved June 25, 1917.

§ 239. Negligence of third persons. This section of the Illinois Act is designed to prevent double payment of compensation for injuries arising out of and in the course of the employment where there is involved as the proximate cause of such injuries the negligence of some person other than the employer giving rise to

a claim for damages against such other persons. It has been said that it is a mere legislative recognition of the equitable doctrine of subrogation.[1] It is not unconstitutional, as taking property without due process of law.[2]

If such other person whose negligence proximately causes the injury is operating under the Compensation Act, then the employer is subrogated[3] to the rights of the person entitled to compensation against such other person.[4] This provision takes away the right of action heretofore available to injured employees where their injuries result from the negligence of others, if such injuries arise out of and in the course of the workmen's employment, and are, therefore, within the purview of the Workmen's Compensation Act. For example, under this provision of the Act, a teamster, working for an employer covered by the Act, who was himself at the time of the accident exposed to the hazards of the employer's business and was run into by a street car while driving a team in the performance of his duties, would not be permitted to sue the street car company in a common law action for negligence. The only relief afforded him against the street car company operating under the Act would be for the benefit of his employer who, according to the terms of the Act, might recover from the street car company the amount of compensation he was obliged to pay his injured employee;[5] and the employer, under this provision, would be entitled to have any moneys paid by the tort feasor to the injured employee immediately applied to the discharge of his obli-

1 Western States Gas & Electric Co. v. Bayside Lumber Co., 187 Pac. (Cal.) 735; but see City v. Southwestern Gas & Electric Co., 74 Southern (La.) 559; Merrill v. Marietta Torpedo Co., 92 S. E. (W. Va.) 12, 14 N. C. C. A. 912.

2 Johnson v. Choate, 284 Ill. 214; Jones v. Fisher, 286 Ill. 606, and cases cited; Peet v. Mills, 76 Wash. 437, 4 N. C. C. A. 786.

3 "Subrogated" defined as meaning "transferred": Friebel v. C. C. Ry. Co., 280 Ill. 76, 15 N. C. C. A. 248; Book v. City of Henderson, 197 S. W. (Ky.) 449, 16 N. C. C. A. 401.

4 Vose v. Central Illinois Public Service Co., 286 Ill. 519.

5 Sabatino v. Thomas Crimmins Construction Co., 168 N. Y. Supp. 495, 16 N. C. C. A. 400.

gation.[6] But the Illinois Supreme Court seems to hold that if the employer becomes insolvent and cannot pay compensation, or if he refuses to sue the negligent third person, then the employee may sue in the employer's name for his own benefit.[7] It is no defense to such an action brought by the employer that he has been indemnified by an insurance carrier for the amount of compensation paid out.[8]

The administrator of a deceased workman has no power to release the liability of the third person so as to prevent a proceeding by the employer for reimbursement to which he is entitled under the statute.[9]

If the other person, whose negligence is the proximate cause of the injury, is not operating under the Compensation Act, then he may be proceeded against at law for damages in the first instance by the person entitled to compensation, but such person shall only be entitled to retain such portion of the amount recovered as exceeds the amount of the compensation received from his employer, and the balance shall be paid to the employer to reimburse him for the compensation paid.[10] The measure of damages in such suit, therefore, is not the amount of compensation paid or to be paid, but any amount which the injured man might himself have recovered by reason of such injury resulting from the negligence of such third person.[11]

It is also provided that if the person entitled to compensation "shall agree to receive compensation from the employer, or to institute proceedings to recover the same, or accept from the employer any payment on account of such compensation, such employer shall be

[6] Rosenbaum v. Hartford News Co., 102 Atl. (Conn.) 120, 16 N. C. C. A. 412.

[7] Friebel v. C. C. Ry. Co., 280 Ill. 76, 15 N. C. C. A. 248.

[8] Otis Elevator Co. v. Miller & Paine, 240 Fed. 276, 14 N. C. C. A. 1013; Marshall-Jackson Co. v. Jeffries, 166 N. W. (Wis.) 647, 16 N. C. C. A. 408.

[9] Maert v. Western Union Telegraph Co., 172 N. W. (Mich.) 606.

[10] Muncaster v. Graham Ice Cream Co., 172 N. W. (Nebr.) 52; Hansen v. Northwestern Fuel Co., 174 N. W. (Minn.) 726.

[11] Western States Gas & Electric Co. v. Bayside Lumber Co., 187 Pac. (Kas.) 735.

subrogated to all the rights" of the person entitled to compensation and may proceed against such other person for damages. "To institute proceedings" to recover compensation means to employ the procedure pointed out in the statute for the recovery of such compensation, and, unless this method of procedure is pursued, the employee will not be held to have instituted proceedings within the meaning of this provision.[12]

The injured person cannot concurrently proceed for compensation and also for common law damages.[13]

Having exercised his election, the employee cannot pursue the alternative remedy which was open to him prior to his election.[14]

The Supreme Court of Illinois, in considering the general effect of Section 29, said that neither an employee nor his personal representative or next of kin, had any vested right to recover damages for personal injuries to the employee that the Legislature might not at any time take away; that the Compensation Act fixes the utmost measure of liability to the employee and that the employer was the only person directly liable to the employee, and that the employee could maintain no action whatever in his own name (where all parties were under the Act) against the person causing the injury; that the common law right of the employee to sue for his injury against the party negligently causing his injury was, in such case, transferred to his employer, and that the employer might maintain a suit against the party causing the injury by proving such common law right against such negligent person, but that the amount of such recovery could not exceed the amount that the employer was required to pay his employee under the Compensation Act; that the statute permitted the employer to sue the negligent third per-

[12] Brabon v. Gladwin Light & Power Co., 167 N. W. (Mich.) 1024, 16 N. C. C. A. 392.

[13] Labuff v. Worcester Consolidated Street Ry. Co., 120 N. E. (Mass.) 381.

[14] Hanke v. New York Consolidated R. Co., 168 N. Y. Supp. 234, 16 N. C. C. A. 399; Sabatino v. Thomas Crimmins Construction Co., 168 N. Y. Supp. 495, 16 N. C. C. A. 400.

son for such damages where all three of the parties were under the Compensation Act as soon as the amount of compensation payable to the employee was fixed and determined, whether paid in full by the employer or otherwise, in order that the statute of limitation might not run against such suit. It was further held that, as the right of the employer to sue the party causing the injury in such case was given for remuneration to the employer for the amount he was compelled to pay his employee for the negligent act of the person whose negligence caused the injury, and to enable such employer to pay his injured employee out of the amount so recovered, such recovery was clearly for the use of the injured employee and, in case of insolvency or the refusal of the employer to sue for such damages, it was the right of the injured employee, after the amount of his compensation had been fixed, to sue for such damages in the name of his employer, for the employee's use.

Discussing the latter part of the section, the Supreme Court continues:

"By the express provisions of Section 29 above quoted, where the person by whose neglect the injury is caused has elected not to be bound by the Act, as alleged in three of the pleas now under consideration, the common law right of action is preserved against him in full. In such case the employee is not put to his election between compensation under the Compensation Act and damages at common law. The common law action and the claim for statutory compensation may be prosecuted at the same time. Said section does not limit the damages which may be recovered in the action at law to the amount of compensation allowed to the employee, but does provide for the indemnification of the employer out of the amount recovered. After the employer is thus completely indemnified the employee is entitled to the entire balance of the judgment recovered, if there is a recovery for more than is sufficient for such indemnification. The employer is given the right to sue for the entire damages, either in his own name or in the name

of the injured employee, or he may continue any suit begun in the name of such employee after his liability for compensation is fixed or paid. The right of action is not otherwise modified by the Compensation Act. The law action in such a case is continued and maintainable for the use of both employer and employee, for both are supposed to be, and are in fact, interested in the judgment. Each party has an actual and enforcible interest in the judgment in cases where it is in excess of indemnity to the employer, and each party necessarily would have the right to enforce the collection of the judgment and the payment to himself and the portion thereof legally belonging to him. The party in whom is the legal right of action may bring and maintain a suit, and it is not necessary that the record should show for whose use or benefit the suit is brought. (Atkins v. Moore, 82 Ill. 240; Schott v. Youree, 142 id. 233.) There is but one legal cause of action, and it is for the common benefit and use of both employer and employee. By the express provisions of said section the suit may be maintained in either the name of the employee or that of the employer. The defendant's defenses, if he has any, are necessarily the same whether he is sued in the name of the employer or of the employee. A suit in the name of the employee and a judgment therein against the defendant would be a bar to another suit in the name of the employer for the same damages, whether the suit was, in fact, prosecuted and controlled by the employee or by the employer. It must necessarily follow, then, that either the employee or the employer may prosecute such a suit to a final judgment and force the collection of the same. The plaintiff must distribute the proceeds of the judgment between the employer and the employee in the proportion to which each is entitled. The court, on its attention being called thereto by the other party interested in the judgment, would be authorized to make such order as would insure the proper distribution of the judgment, but the division thereof is no concern of the defendant. Payment of the judgment by the defend-

ant, if any should be recovered against him, would completely discharge him from all further liability."[15]

In a California case it was stated that if all parties are under the Compensation Act, or if the negligent third person is not under the Act, but the injured employee agrees to receive compensation or to institute proceedings to recover such compensation or accept from the employer any payment of compensation (conditions similar to the Illinois law), then the right of action against the negligent third person becomes immediately assigned by operation of law to the employer, and no settlement by the employee with the negligent third person can have any effect upon the rights of the employer to recover over from the negligent third person.[16]

In any such action it would be necessary to prove, first, that the injury was caused by the negligence of such other person and, secondly, was not proximately caused by the negligence of the employer or his employees.

The other person referred to in a similar provision in the English Act[17] is held to include any person other than the employer himself, and, therefore, to include a fellow workman who has caused the injury, and that a right of action is available to the employer against such other workman for breach of a statutory duty which caused the accident.[18] In view of the language of Section 29, however, it would seem that such other person would not include any other employee of the employer, because such right of action is only given when the injury is not proximately caused by the negligence of the employer or his employees.

The words, "creating a legal liability" do not refer to any judicial determination of a question of legal liability, but they refer merely to a *prima facie* case of legal

15 Gones v. Fisher, 286 Ill. 606.

16 Massachusetts Bonding & Ins. Co. v. San Francisco-Oakland Terminal Rys., 178 Pac. (Cal.) 974.

17 6 Edw. VII, Chap. 58, § 6 (1-2).

18 Smith Dock Co. v. Readhead, (1912), 2 K. B. 323, 5 B. W. C. C. 449.

liability, or to such circumstances as are alleged to create it.[19]

It is manifest that this section does not impose upon the other person, whose negligence was the proximate cause of the injury, any liability which did not exist before, and, consequently, any defenses which are available to him in such an action may be made in any suit brought against him, either by the employee or the employer, under the subrogation provisions of the section. And it would also seem that inasmuch as the suit against him is one for indemnity, that he might set up in such action any defenses which he might make against the workman if he had brought an action at law, viz., contributory negligence. Nor does the section give to an employer, who is a tort feasor, a right of action against a third party who is a joint tort feasor.[20]

Where the employer seeks to indemnify himself by suit against the third person for damages, it is proper to include in the amount of such indemnity not only the amount of such compensation paid, but the legitimate costs and expenses of the compensation proceedings.[21]

In any such action for indemnity, the defendant should be permitted to show that the accident was not caused by his fault, or that the payment made by the employer was not compensation paid in accordance with the statute, or that although the amount of the payment was within the limit of the Act, it was not such an amount as was reasonable for the employer to have paid.[22]

§ 240. Miscellaneous cases. The statutes of the several states contain widely different provisions with reference to the rights of the injured employee or his employer against a third person whose negligent act is the proximate cause of the injury, and the decisions of the courts are, therefore, of little value in other states.

[19] Page v. Burtwell, (1908), 2 K. B. 758, 1 B. W. C. C. 267.

[20] Cory & Sons v. France Company, (1910), 1 K. B. 114, 27 T. L. R. 18.

[21] Great Northern Railroad v. Whitehead, (1902), 18 T. L. R. 816, 4 B. W. C. C. 39.

[22] Thompson v. N. E. M. Co., (1903), 1 K. B. 428, 5 W. C. C. 71.

In Massachusetts it was held that if compensation was accepted the insurer is at once subrogated to the employee's right of action.[23]

In Texas it is held that the insurance carrier has no right of subrogation against the third person whose negligence causes the injury.[24]

In California it is held that the insurance carrier and the injured employee may jointly sue the person negligently causing the injury without a formal award of compensation since the liability to pay compensation is created by the Act and not by the award.[25]

Under the Texas Act it was held that where the claimant had recovered compensation the claim against the negligent third person was barred by his election to accept compensation.[26]

Under the California Act it is held that the employer has an interest in the employee's right of action against a negligent third person which cannot be impaired by a settlement by the employee which is not concurred in by the employer; and that the third person is chargeable with notice that the settlement could not affect the employer's rights.[27]

Under the Michigan Act it has been held that if a dependent accepts compensation from the employer this does not relieve the negligent third person from legal responsibility to others who might be entitled to damages on account of death of the employee.[28]

In Massachusetts it is held that settlement by the employee of the common law liability with the third person causing the injury, and the execution and delivery of a release, bars any claim for compensation.[29]

But it is held in New Jersey that the mere fact that

[23] Labuff v. Worcester Consolidated Street Ry. Co., 120 N. E. (Mass.) 381.

[24] City of Austin v. Johnson, 204 S. W. (Tex.) 1181.

[25] Moreno v. Los Angeles Transfer, 186 Pac. (Cal.) 800.

[26] Dallas Hotel Co. v. Fox, 196 S. W. (Tex.) 647.

[27] Papineau v. Industrial Acc. Com., 187 Pac. (Cal.) 108.

[28] Vereeke v. City of Grand Rapids, 168 N. W. (Mich.) 1019.

[29] In re Cripp, 104 N. E. (Mass.) 565, 13 N. C. C. A. 621.

a common law liability exists does not deprive the employee of his right to compensation.[30]

In Wisconsin it is held that if the employee elects to pursue the common law remedy he waives his statutory right to compensation; and if he elects to pursue his statutory remedy the employer, by succession, immediately becomes the owner of the right of action against the wrong doer and may enforce such right in his own name; and it is held that the employer may assign this right of action.[31]

It is generally held that this right of action against the negligent third person is assignable.[32] And it is held that an assignment of such portion of the right of action as will indemnify the employer does not bar the right of action against the negligent third person under the Texas Act.[33]

It has been held that where, after receiving an award, the employee brought suit against the doctor for malpractice and assigned his right of action to the employer, the assignment did not carry with it the cause of action given him by the statute nor forfeit his claim for compensation under the Act.[34]

Under the New York statute it has been held that where the workman was assaulted by strikers and he accepted compensation from his employer, the employer was subrogated to the rights of the employee for civil damages for the assault.[35]

Of course, this section has no application to cases of accident which do not arise out of and in the course of the employment and are, therefore, not covered by the Workmen's Compensation Act.[36]

[30] Bryant v. Fissell, 86 Atl. (N. J.) 458, 3 N. C. C. A. 585.

[31] McGarvey v. Independent Oil & Grease Co., 146 N. W. (Wis.) 895, 5 N. C. C. A. 803.

[32] City v. Southwestern Gas & Electric Co., 74 Southern (La.) 559; Casualty Company of America v. Sweet Electric Light & Power Co., 174 App. Div. (N. Y.) 825, 14 N. C. C. A. 108; Phoenix Construction Co. v. Witt & Saunders, 190 S. W. 780.

[33] Lancaster v. Hunter, 217 S. W. (Tex.) 765.

[34] Brown v. Geo. A. Fuller Co., 163 N. W. (Mich.) 492.

[35] Dietz v. Solomonwitz, 166 N. Y. Supp. 49, 16 N. C. C. A. 413.

[36] Podgorski v. Kerwin, 175 N. W. (Minn.) 694.

CHAPTER XXII

EMPLOYERS' REPORTS OF ACCIDENTS

§ 241. Reports to the Industrial Commission.

Sec. 30 of the Illinois Act

§ 30. It shall be the duty of every employer within the provisions of this Act to send to the Industrial Board in writing an immediate report of all accidental injuries arising out of or in the course of the employment and resulting in death; it shall also be the duty of every such employer to report between the 15th and the 25th of each month to the Industrial Board all accidental injuries for which compensation has been paid under this Act, which injuries entail a loss to the employee of more than one week's time, and in case the injury results in permanent disability, a further report shall be made as soon as it is determined that such permanent disability has resulted or will result from such injury. All reports shall state the date of the injury, including the time of day or night, the nature of the employer's business, the name, address, the age, sex, conjugal condition of the injured person, the specific occupation of the injured person, the direct cause of the injury and the nature of the accident, the character of the injury, the length of disability, and, in case of death, the length of disability before death, the wages of the injured person, whether compensation has been paid to the injured person, or to his legal representatives or his heirs or next of kin, the amount of compensation paid, the amount paid for physi-

Sec. 30 of the Illinois Act

cians', surgeons' and hospital bills, and by whom paid, and the amount paid for funeral or burial expenses, if known. The making of reports as provided herein shall release the employer covered by the provisions of this Act from making such reports to any other officer of the State.

§ 241. Reports to the Industrial Commission. Under the provisions of this section, at least three separate reports must be made by the employer, of all accidents resulting in permanent disability, viz., one immediately after the accident happens, a second between the 15th and 25th of each month, covering *all* accidents happening during the preceding month for which compensation has been paid, and which entail a loss to the employee of more than one week's time, and the third report must be made as soon as the permanency of such disability is determined. Two reports must be made of all accidents, whether compensation is paid therefor or not, and regardless of the loss of time to the employee.

The statistics which will thus be made available, as to accidents in the industries of the State, will be of great service in administering the law, and in the future amendment and growth of the compensation system.

On account of the various other statutes of the State, imposing the duty upon employers of labor to make reports to various departments and boards of the state government, resulting in a burdensome duplication of accident reports, it is wisely provided that the making of the reports required by this section, shall excuse the employer from making such reports to any other state officer.

These reports also enable the Industrial Commission to keep in touch with all accidents which arise out of and in the course of the employment in the various industries in the State, so that they may see to it that injured men and their dependents receive the compensation to which they may be entitled, promptly, and in accordance with the provisions of the law.

It has been held that the employer's report of acci-

dent is admissible in evidence in a proceeding for compensation, and that it is sufficient evidence in itself of notice to the employer of the accident.[1]

[1] In re Matthewson, 116 N. E. (Mass.) 831, 17 N. C. C. A. 84; In re Brown, 116 N. E. (Mass.) 897, 17 N. C. C. A. 84; Reck v. Whittlesberger, 181 Mich. 463, 5 N. C. C. A. 917.

CHAPTER XXIII

SUBCONTRACTING

§ 242. Subcontracting.

Sec. 31 of the Illinois Act

§ 31. Any one engaging in any business or enterprise referred to in sub-sections 1 and 2 of section 3 of this Act who undertakes to do any work enumerated therein, shall be liable to pay compensation to his own immediate employees in accordance with the provisions of this Act, and in addition thereto if he directly or indirectly engages any contractor whether principal or sub-contractor to do any such work, he shall be liable to pay compensation to the employees of any such contractor or sub-contractor unless such contractor or sub-contractor shall have insured, in any company or association authorized under the laws of this State to insure the liability to pay compensation under this Act, or guaranteed his liability to pay such compensation.

In the event any such person shall pay compensation under this section he may recover the amount thereof from the contractor or sub-contractor, if any, and in the event the contractor shall pay compensation under this section he may recover the amount thereof from the sub-contractor, if any.

This section shall not apply in any case where the accident occurs elsewhere than on, in or about the immediate premises on which the principal has contracted that the work shall be done. [Amended by Act approved June 28, 1919.

§ 242. Subcontracting. Section 31 of the Illinois Act of 1913 provided that "any person, firm or corporation,

who undertakes to do, or contracts with others to do or have done for him, them or it, any work enumerated as extra-hazardous in Paragraph (b) of Section 3," who does not require the sub-contractor to insure his liability to pay compensation to his employees, shall be liable to the employees of such sub-contractor for such compensation. Under this provision the Supreme Court held that the section did not apply solely to contractors and sub-contractors but also to "any person, firm or corporation" for whom the work was to be done.[1] This provision was held to be constitutional.[1a]

It was also held that the principal contractor was liable for compensation to the employees of the sub-contractor who did not insure their compensation, and the provision of the statute that the principal contractor must "require" the sub-contractor to insure his liability was not complied with by a mere demand upon such sub-contractor that he insure his employees.[2]

The language of the present Section 31 of the Illinois Act, however, differs somewhat from the language of the Act of 1913 and limits its application to "anyone engaged in any business or enterprise referred to in subsections 1 and 2 of Section 3 of this Act, who undertakes to do any work enumerated therein."

The purpose of this section, however, is the same as the purpose of the original section, namely, to insure to the workman the payment of his compensation, when he is injured in the employment of an irresponsible sub-contractor, by making the principal contractor responsible for compensation due, or to become due the sub-contractor's workmen, in the event that the sub-contractor shall not have insured his liability to pay such compensation.

1 American Steel Foundries v. Industrial Board, 284 Ill. 99, 16 N. C. C. A. 686, 17 *Ibid*, 701.

1a Parker-Washington Co. v. Industrial Board, 274 Ill. 498, 14 N. C. C. A. 127, 653, 1079.

2 Butler Street Foundry & Iron Co. v. Industrial Board, 277 Ill. 70, 15 N. C. C. A. 127, 486; see also, Craig v. Royal Insurance Co., 8 B. W. C. C. 339. "Immediate Employer" defined in Kirkpatrick v. Industrial Acc. Com., 161 Pac. 274, 14 N. C. C. A. 135, 15 *Ibid*, 452; see also, Sullivan v. Preston, 163 N. Y. Supp. 692, 14 N. C. C. A. 135.

The present section, however, limits this additional liability to the two sub-sections of Section 3 which cover general construction work, namely, "the erection, maintaining, removing, remodeling, altering or demolishing any structure" and "construction, excavating or electrical work." The present provision, therefore, does not apply to other employers engaged in other lines of hazardous work, enumerated in Section 3, who sub-contract or sublet a portion of such work in the course of the transaction of their business.

It has been held that the fact that the sub-contractor's contract with the principal contractor is invalid will not defeat the claim of the injured workman or make him any the less an employee of the principal contractor under the circumstances provided in the statute.[3]

The language of the English Act is "where any person in the course of or for the purposes of his trade or business" contracts with others to do work, he shall be liable, under certain circumstances, to the employees of such other person for compensation. The Illinois Act does not include the words "in the course of or for the purposes of his trade or business." It would seem, however, that the language of the Illinois Act must be construed as having the same intention and purpose as the language of the English Act. It provides "anyone engaging in any business or enterprise." It is, therefore, clear that the section is applicable only to those who are engaged in some business or enterprise as such, referred to in Sub-Sections 1 and 2 of Section 3 relating to some branch of the general construction or contracting business. The provision, therefore, would not apply to the owner of a lot of land who hired other persons to build a house for him for his own personal use and whose business might be that of teaching school or practicing law.[4]

[3] Wausau Lumber Co. v. Industrial Commission, 164 N. W. (Wis.) 836, 15 N. C. C. A. 446; see also, City of Milwaukee v. Fera, 174 N. W. (Wis.) 926.

[4] Alabach v. Industrial Commission, 291 Ill. 338; Bargewell v. Daniel, 98 L. T. R. 257; Rennie v. Reid, 1 B. W. C. C. 324; see, however, Opitz v. Hoertz, 161 N. W. (Mich.) 866, 15 N. C. C. A. 497.

In a Vermont case, where a Creamery Company which was subject to the Act employed a builder, who was to construct a plant for it, and paid him the wages of his employee by checks which he endorsed and paid over, it was held that, inasmuch as the business of building was not the business of the Creamery Company, an employee of the carpenter, who fell from a staging, sustaining injuries, was not an employee of the Creamery Company and could not recover compensation from it, especially since, if recovery were allowed in such cases, it would impose an unwarrantable burden upon the insurer which it had not contemplated.[5]

The construction given to the language of the English Act also is that if a person carrying on a business which is within the Act engages a contractor to do any part of the work, such person should be compelled to compensate the injured workman of the contractor, but he should not be so liable if the work executed by the contractor was merely ancillary or incidental to and was no part of the process of the trade or business carried on by the person employing the contractor.[6]

It has also been held that if a workman is not within the definition of the Act, he cannot recover against the principal,[7] as where he is an independent contractor.[8]

Independent contractors are generally not included within the meaning of the word "employee."[9]

Whether they are independent contractors or not is a question of law for review by the courts;[10] but where there is a dispute and there is conflict in the evidence, it is a question of fact;[11] and the finding of a Commission on such a disputed question of fact will not be disturbed by the courts.[12]

[5] Packett v. Moretown Creamery Co., 99 Atl. (Vt.) 638, 14 N. C. C. A. 136, 15 *Ibid*, 500.

[6] Skates v. Jones, (1910), 26 T. L. R. 643, 3 B. W. C. C. 460.

[7] Marks v. Carne, (1909), 2 K. B. 516, 2 B. W. C. C. 186.

[8] Byrne v. Brd. Council & Kelly, (1911), 45 Ir. L. T. 206.

[9] See §§ 104 *et seq.*, *ante;* Yolo Water & Power Co. v. Industrial Acc. Com., 168 Pac. (Cal.) 1146, 15 N..C. C. A. 451.

[10] Columbia School Supply Co. v. Lewis, 150 N. E. (Ind. App.) 103.

[11] McDonough v. Industrial Acc. Com., 166 Pac. (Cal.) 1024, 15 N. C. C. A. 449.

[12] Nissen Transfer & Storage Co. v. Miller, 125 N. E. (Ind. App.) 652.

CHAPTER XXIV

PENALTIES, REPEAL, ETC.

Secs. 32 to 35 of the Illinois Act

§ 32. If any of the provisions of this Act providing for compensation for injuries to or death of employees shall be repealed or adjudged invalid or unconstitutional, the period intervening between the occurrence of any injury or death and such repeal or final adjudication of invalidity, shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death, but the amount of any compensation which may have been paid for any such injury shall be deducted from any judgment for damages recovered on account of such injury. Any claim, disagreement or controversy existing or arising under "An Act to promote the general welfare of the people of this State, by providing compensation for the accidental injuries or death suffered in the course of employment," approved June 10, 1911, in force May 1, 1912, shall be adjusted in accordance with the provisions of said Act, notwithstanding the repeal thereof, or may by agreement of the parties be adjusted in accordance with the method of procedure provided in this Act for the adjustment of differences, jurisdiction to adjust such differences so submitted by the parties being hereby conferred upon the Industrial Board or committee of arbitration pro-

Secs. 32 to 35 of the Illinois Act

vided for in this Act. [Amended by Act approved June 25, 1917.

§ 33. Any wilful neglect, refusal, or failure to do the things required to be done by any section, clause, or provision of this Act, on the part of the persons herein required to do them, or any violation of any of the provisions or requirements hereof, or any attempt to obstruct or interfere with any court officer, or any other person charged with the duty of administering or enforcing the provisions of this Act, shall be deemed a misdemeanor, punishable by a fine of not less than $10.00 nor more than $500.00 at the discretion of the court.

§ 33½. This Act may be cited as the Workmen's Compensation Act. [Added by an Act approved June 28, 1915.

§ 34. The invalidity of any portion of this Act shall in no way affect the validity of any other portion thereof which can be given effect without such invalid part.

§ 35. That an Act to promote the general welfare of the State of Illinois by providing compensation for accidental injuries or death suffered in the course of employment, approved June 10, 1911, in force May 1, 1912, be, and the same is, hereby repealed.

§ 243. Common law claims in the case of invalidity or repeal of statute. Section 32 of the Illinois Act provides that "if any of the provisions of this Act, providing for compensation for injuries to, or death of, employees, shall be repealed or adjudged invalid or unconstitutional, the period intervening between the occurrence of an injury or death and such repeal or final adjudication of invalidity shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death;" but that, in the event the law is held unconstitutional, or is repealed, any amount paid as compensation shall be deducted from

any judgment for damages recovered on account of such injury.

This provision is clearly intended to prevent the running of the statute of limitation against any claim at common law for damages, in the event of repeal or of a holding by the Supreme Court that the Act is unconstitutional.

It is also clear that, in such event, the amount of any compensation paid on account of any such injury shall be deducted from any judgment secured in any such common law action for damages. This does not mean merely that the amount paid as compensation may be considered by the jury but that after trial and judgment entered in such common law case, the defendant will be entitled to have deducted from such judgment any amount paid by him as compensation.

§ 244. Repeal of Act of 1911. Section 35 of the Act repeals the original Workmen's Compensation Act which became effective May 1, 1912.[1] Section 32 authorizes the settlement of any claim or controversy arising under the old Act by submission to the Industrial Board or an arbitration committee under the present Act, if the parties so desire, and express authority is conferred upon the Industrial Board and the committee of arbitration for such purpose.

§ 245. Penalties. Section 33 of the Act provides that any wilful neglect, refusal, or failure to do any of the things required by the Compensation Act, or any attempt to obstruct or interfere with any court officer, or other person charged with the duty of administering or enforcing the Act, shall be deemed a misdemeanor, punishable by a fine of from ten to five hundred dollars. The infliction of a penalty under this section, or under Section 27 of the Act, upon any employer would not relieve such offending employer from liability for the compensation fixed by the statute.[2]

This is the general rule of construction of statutes of

1 Laws, Ill., 1911, p. 315.

2 Gibson v. Dunkerley Bros., (1910), 102 L. T. 587, 3 B. W. C. C, 347; Lee & Sykes v. Dunkerley Bros., (1911), A. C. 5, 4 B. W. C. C. 115.

this character. The fines imposed represent the interest of the state in the enforcement of the law, and the provisions for compensation are for the personal benefit of injured employees and their dependents.

The legislature intended by creating a penalty to make it certain that the payments would not be delayed for trivial reasons, and the delinquent payments referred to by the statute mean such payments as are contemplated by the terms of the Act.[3]

The neglect to perform some act required by the compensation law is punishable in the County where the Act should have been done, in accordance with the general rule that an offense involving an act of omission is committed where the act should have been done.[4]

§ 246. Invalidity. Section 34 of the Act provides that the invalidity of any portion of the Act shall in no way affect the validity of any other portion thereof. The purpose of this section obviously is to give notice that no one provision of the Act was passed as a compensation for any other provision, but that the several provisions of the Act were separable and independent. Such in substance is the holding of the Supreme Court of Wisconsin with reference to a similar provision in the Wisconsin Compensation Act, in which the court say: "We may say in passing that we know of no good reason why the legislature may not declare its intention that one part or section of a law is not a compensation for and that it may be separated from the balance of the Act."[5]

[3] U. S. Fidelity & Guaranty Co. v. Wickline, 170 N. W. (Neb.) 193, 17 N. C. C. A. 1065.

[4] In re Industrial Board of Indiana, 117 N. E. (Ind. App.) 546.

[5] Borgnis v. Falk Co., 147 Wis. 327, 2 N. C. C. A. 834.

CHAPTER XXV

CONSTRUCTION OF COMPENSATION ACTS

§ 247. Rules of construction. In a number of cases under the English Compensation Act of 1897, when the courts were first called upon to interpret the law and announce rulings for their guidance in construing it, many declarations will be found to the effect that the language of the Act should be construed with reference to its practical and ordinary meaning and that no technical construction should be placed upon it. For example, it is said:

"The only way to construe the Act is to read it fairly, taking the words in their common and ordinary significance. * * * The courts ought not to strain the language in order to bring in or exclude any particular cases, however arbitrary or unscientific the line of demarkation drawn by the Act may seem to be."[1]

Again:

"The language of the statute we are called upon to construe must be interpreted in its ordinary and popular meaning. The use of language preceded scientific investigation."[2]

And in another case the same judge said:

"It appears to me that the statute deliberately and designedly avoided anything like technicality."[3]

[1] Hoddenott v. Newton Chambers & Co., (1901), A. C. 49, 57, 3 W. C. C. 74.

[2] Brinton's v. Turvey, (1905), A. C. 232, 7 W. C. C. 1.

[3] Howell v. Maine Colliery Co., (1900), A. C. 366, 371, 2 B. W. C. C. 29.

In another case, it was said:

"It ought to be remembered that the Workmen's Compensation Acts are expressed, not in a technical, but in a popular sense."[4]

Again it was said:

"We have been told by the House of Lords to give the terms used in the Workmen's Compensation Act their practical, popular meaning, and not put a technical construction on them. Where a statute is adopted from another state or from Great Britain, it will be presumed that the Legislature intended it to receive the construction given it by the courts of that state or country, unless such construction would be in conflict with the policy of the State."[5]

It has been held in Michigan that the Compensation Act is in derogation of the common law and on that account should be strictly construed, although it is remedial and provides a remedy against a person who otherwise would not be liable.[6]

The overwhelming weight of authority, however, is to the effect that compensation laws, being remedial, should be liberally and broadly construed to carry out their beneficent intent, although they are in derogation of the rules of the common law.[7]

For example, it was said by the Illinois Supreme Court

[4] Smith v. Coles, (1905), 2 K. B. 827, 8 W. C. C. 116.

[5] Suburban Ice Co. v. Industrial Board, 274 Ill. 630, 14 N. C. C. A. 132, 777, 1080. Appeal of Hotel Bond Co., 89 Conn. 143.

[6] Andrejwski v. Wolverine Co., 182 Mich. 298, 6 N. C. C. A. 807.

[7] Kennerson v. Thames Towboat Co., 89 Conn. 367; Appeal of Hotel Bond Co., 89 Conn. 143; Coakley's Case, 216 Mass. 71, 16 N. C. C. A. 88; Bentley's Case, 217 Mass. 79, 4 N. C. C. A. 559; Panasuk's Case, 217 Mass. 589, 5 N. C. C. A. 688; State ex rel. Northfield v. Dist. Court, 131 Minn. 352; State ex rel. Splady v. Dist. Court, 128 Minn. 338; State ex rel. Virginia & R. L. Co. v. Dist. Court, 128 Minn. 43, 15 N. C. C. A. 684; Lindebauer v. Weiner, 159 N. Y. Supp. 987; In re Petrie, 215 N. Y. 335, 17 N. C. C. A. 1058; McQueeney v. Sutphen, 167 App. Div. 528, 153 N. Y. Supp. 554; Zappala v. Indus. Ins. Com., 82 Wash. 314; Wendt v. Industrial Ins. Com., 80 Wash. 111, 11 N. C. C. A. 321; Peet v. Mills, 76 Wash. 437, 4 N. C. C. A. 786; Federal Rubber Mfg. Co. v. Havolic, 162 Wis. 341, 12 N. C. C. A. 793; Sadowski v. Thomas Furnace Co., 157 Wis. 443; In re Stewart, 126 N. E. (Ind. App.) 42; Illinois Indemnity Exchange v. Industrial Commission, 289 Ill. 233.

that: "The Act is commendable legislation and should be liberally construed in order to give effect to the purpose and object in adopting such Act." [8]

Again, it was said that the statute should receive a liberal but reasonable construction in order to carry out its purpose and object according to the spirit of the Act, but the court should not give it a construction clearly outside of the legislative intention.[9]

Similar expressions are in the decisions of most of the courts. For example: The statute being highly remedial in character, the courts ought to guard against a narrow construction and not exclude a servant from the benefits thereof, unless constrained by unambiguous language or the clear intent as gathered from the entire Act; [10] the Act is to be construed liberally to protect the injured employee whose rights to compensation otherwise it has taken away; [11] it is to be construed broadly to carry out its manifest purpose; [12] it is to be interpreted in the light of its purpose and, so far as reasonably may be, to accomplish its beneficent design; [13] the Act should be construed liberally and not strictly as a statute in derogation of the common law, and should receive as broad an interpretation as can fairly be given it; [14] it has been, and should be, construed fairly, indeed liberally, in favor of the employee.[15]

In a New York case it was said:

"It is a fundamental canon of the proper construction of the Workmen's Compensation Act that it must be construed remediably and beneficially, with a view of carrying out fairly and fully the legislative purpose and bring-

[8] Chicago Cleaning Co. v. Industrial Board, 283 Ill. 177, 16 N. C. C. A. 683, 928.

[9] Aurora Brewing Co. v. Industrial Commission, 277 Ill. 142, 14 N. C. C. A. 99, 15 *Ibid*, 802.

[10] State ex rel. Duluth, etc., Co. v. Dist. Court, 129 Minn. 176, 17 N. C. C. A. 1060.

[11] In re Meley, 219 Mass. 136.

[12] In re Sullivan, 218 Mass. 141, 11 N. C. C. A. 434.

[13] Young v. Duncan, 218 Mass. 346.

[14] Moore v. Lehigh Valley R. Co., 169 App. Div. N. Y. 177.

[15] In re Heitz, 218 N. Y. 148; see also, Winfield v. New York Central R. R. Co., 168 App. Div. (N. Y.) 351; Smith v. Price, 168 App. Div. (N. Y.) 421; Spratt v. Sweeney, 168 App. Div. (N. Y.) 403, 9 N. C. C. A. 918.

ing within the operation of the Act all workers whose accidental injuries are inherent occupational risks, rather than with a view to excluding from the operation and protection of the Act persons whose claim to its benefits falls fairly within the principle that disabilities to workers through trade mishaps should not be left to hang burdensomely on individuals who might thereby be forced into the class of dependents on public or private charity."[16]

The cases referred to and many others clearly establish the proposition that in construing the statute, which is referable to the police power and was originated to promote the common welfare supposed to be seriously jeopardized by the infirmities of an existing system, the conditions giving rise to the law, the fault to be remedied, the aspirations evidently intended to be embodied in the enactment, and the effects and consequences as regards responding to the prevailing conception of the necessities of public welfare, should be considered, and the statute given such broad and liberal meaning as can be fairly read therefrom, so far as required effectively to eradicate the mischiefs it was intended to obviate.[17]

It has been said however that while it is the proper practice to administer the compensation law in a liberal spirit, no good reason suggests itself for treating the claimants liberally and the employers and insurance carriers harshly.[17a]

Since the design of the law is to decrease, not promote, unnecessary litigation, the plain words of the statute should be given their ordinary signification,[18] and all provisions be given effect, if possible, according to the legislative intent.[19]

[16] In re Rheinwald, 168 App. Div. N. Y. 425.

[17] City of Milwaukee v. Miller, 154 Wis. 652, 4 N. C. C. A. 149; see also, Foth v. Macomber, 161 Wis. 549, 11 N. C. C. A. 559, 15 *Ibid*, 731; Lesh v. Illinois Steel Co., 157 N. W. (Wis.) 539, 15 N. C. C. A. 80.

[17a] Prendergast v. Berrian Bros., 171 N. Y. Supp. 700.

[18] In re Nichols, 217 Mass. 3, 11 N. C. C. A. 501.

[19] Weaver v. Maxwell Motor Co., 186 Mich. 588, 11 N. C. C. A. 433; State ex rel. Garvin v. Dist. Court, 129 Minn. 156, 11 N. C. C. A. 433; Victor Chemical Works v. Industrial

Where two provisions of the statute are so inconsistent that they cannot be reconciled, the one must stand which best conforms with the intent and policy of the statute; and where one section so conforms, it is not to be rendered nugatory by an inconsistent provision though found in a later section which does not conform.[20]

In construing the statute, each section or part will be looked to and given effect, if possible, and the intent of the law makers ascertained from a consideration of the entire Act, including the title;[21] and in giving effect to the legislative intention, words importing the singular number may be applied to several persons or things, and words importing the plural may include the singular.[22]

Administrative construction of the law, while not conclusive, is of persuasive effect if long continued and is not to be disregarded unless judicial construction makes it necessary.[23]

While undoubtedly the correct rule of interpretation is that the compensation law is remedial in character and should be liberally construed in order to carry out its beneficent purposes, at the same time the plan of administration, which involves a hearing on questions of fact before an arbitrator or commission vested with authority conclusively to determine such questions in the absence of fraud, has resulted in a liberality of construction and application of the Act in particular cases beyond the legislative intention and beyond the legitimate purposes of the legislation, commendable and beneficent as it is. For example, the Supreme Court of Illinois has said that the fact that there is some legal evidence sustaining the issue on the part of the claimant is not sufficient to justify an award by the Commission unless the greater weight of all the evidence is in his favor, for the

Board, 274 Ill. 11, 13 N. C. C. A. 552, 14 *Ibid*, 126, 434, 777.

[20] State ex rel. Maryland Casualty Co. v. District Court, 158 N. W. (Minn.) 798, 13 N. C. C. A. 263.

[21] Arnold & Murdock Co. v. Industrial Board, 277 Ill. 295, 15 N. C. C. A. 383; Victor Chemical Co. v. Industrial Board, 274 Ill. 11, 13 N. C. C. A. 552, 14 *Ibid*, 126, 777.

[22] *Ibid.*

[23] Industrial Commission v. Brown, 92 Ohio State 309, 14 N. C. C. A. 843.

burden of proof is on the claimant and it is the duty of the Commission to consider and weigh all the evidence produced and decide according to its preponderance;[24] but, in view of the provision of the statute making the decision of the Industrial Commission conclusive upon questions of fact in the absence of fraud, the same court has held that if there is any competent evidence to sustain the award the court must uphold it, although the preponderance of the evidence is against it.[25] Inasmuch as the decision of the Commission is conclusive only when it is acting within its powers, it is not a question wholly free from doubt as to whether the courts should not interfere and set aside an award which is contrary to the preponderance of the evidence when the court has said that it is the duty of the Commission to consider and weigh all the evidence and to decide according to the preponderance. The practical result has been that a sympathetic arbitrator or commission, influenced more largely by motives of social benevolence than by rules of law, have paid more attention to the rule of law that their decision on questions of fact is conclusive where there is any evidence whatever to sustain it, than they have to the other principle of law that it is their duty to weigh all the evidence and decide in accordance with the preponderance.

§ 248. Amendments. As to an accident happening prior to an amendment to the Act, the statute in force at the time of the accident governs the award;[26] but the practice in all cases is governed by the amendment as to any steps taken after the passage of such amendment, although the accident may have happened, or the proceedings may have been instituted, before the amendment was adopted.[27]

It will, of course, be presumed that the Legislature, in

[24] Halsted v. Industrial Commission, 287 Ill. 509; Lefens v. Industrial Commission, 286 Ill. 32.

[25] Western Electric Co. v. Industrial Commission, 285 Ill. 279.

[26] Moran v. Rogers & Haggerty, 168 N. Y. Supp. 410, 16 N. C. C. A. 188, 17 *Ibid*, 263.

[27] People v. McGoorty, 270 Ill. 618, 10 N. C. C. A. 978.

adopting an amendment, attempted to make a change in the existing law.[28]

In construing an ambiguous amendment, the history, the condition of the law prior to the amendment, and the occasion, necessity and object of the change, are important to be considered.[29]

§ 249. Retroactive effect. It is a general rule of statutory construction that retroactive operation is not to be favored; and it has been held that the Compensation Act does not affect contracts existing at the time of its enactment;[30] and the law should not be held applicable to injuries occurring prior to its enactment.[31]

[28] State ex rel. Maryland Casualty Co. v. Dist. Court (Minn.), 158 N. W. 798, 13 N. C. C. A. 263.

[29] *Ibid.*

[30] Hunter v. Colfax Consolidated Coal Co. 154 N. W. (Iowa) 1037, 11 N. C. C. A. 636, 886; State v. Creamer, 85 Ohio State 349.

[31] Arizona & N. M. Ry. Co. v. Clark, 207 Fed. 817, 11 N. C. C. A. 630; see also, State ex rel. Nelson v. District Court of Meeker County, 128 Minn. 221, 15 N. C. C. A. 681; Bauer v. Court of Common Pleas, 88 N. J. Law 128, 11 N. C. C. A. 634, 14 *Ibid*, 353; Birmingham v. Lehigh & Western Coal Co., 95 Atl. (N. J.) 242, 11 N. C. C. A. 630; Sexton v. Newark District Telegraph Co., 84 N. J. Law 85, 11 N. C. C. A. 633.

CHAPTER XXVI

PLEADINGS AND PROCEDURE

§ 250. Pleadings. No formal pleadings are required in compensation proceedings. It is customary, where there is a Board or Commission administering the Act, to establish by rules certain methods of procedure and frequently blank forms are provided for the use of persons presenting or defending claims before the Board or Commission, but a departure from these forms will not defeat the claim or the defense. Any sort of petition or application which reasonably presents the claim is sufficient, the purpose of the proceeding being to get at the facts with reference to the accident, the disability, the period thereof, etc., with as little formality as is consistent with a fair administration of the Act and an honest inquiry into the merits of the claim.

§ 251. Procedure. The Illinois Act provides in Section 16 that "the process and procedure before the Board shall be as simple and summary as reasonably may be." Most of the compensation laws contain a similar provision, but even in the absence of such a definite provision this is uniformly the spirit in which the laws are administered. It has been said that the Industrial Board is not a court but merely an administrative body and should not be held to the same strict rules with respect to the methods of procedure which prevail in the courts.[1] But inasmuch as the proceedings are sum-

[1] United Paper Board Co. v. Lewis, 117 N. E. (Ind. App.) 276, 15 N. C. C. A. 688.

mary, an unreasonable delay may amount to an abandonment of the proceedings.[2]

Notice of the proceedings in accordance with the statute is, of course, necessary, and service of such notice should be shown by endorsement, or by some other way than by mere recital in the order of the Board that proper notice was given the parties.[3] And it has been held that mere mailing of a claim for compensation to the Board is not a compliance with the statute requiring a filing of such claims.[4]

A claim filed against partners in a partnership name is a valid claim against the partners individually. A partnership is not a legal entity separate and distinct from the persons composing it.[5]

The application of laws of this character should not be made to depend upon fine-spun theories based upon scientific technicalities, but they should be given a practical construction and application.[6]

§ 252. Evidence. It has been held, however, that a compensation proceeding is a civil action in the sense that it should be governed by legal rules of evidence.[7]

It has been said that, while it is the proper practice to administer the compensation law in a liberal spirit, no good reason suggests itself for treating the claimants liberally and the employers and insurance carriers harshly.[8]

While, therefore, neither the forms of pleading or procedure in compensation cases should be strict or technical,[9] at the same time the claimant is obliged to present his claim to the authority constituted by the statute to pass upon it, and prove his case by a fair preponderance of the evidence in accordance with the usual forms of law

[2] Ringwald Linoleum Wks. v. Liquor et al., 99 Atl. (N. J.) 124, 16 N. C. C. A. 756.

[3] Forschner v. Industrial Board, 278 Ill. 102, 14 N. C. C. A. 92, 348.

[4] In re Gorski, 116 N. E. (Mass.) 811, 16 N. C. C. A. 216, 809. "Filing" defined in Cooney v. Rushmore, 100 Atl. (N. J.) 693, 16 N. C. C. A. 805.

[5] Heinze v. Industrial Commission, 288 Ill. 342.

[6] Juergens v. Industrial Commission, 290 Ill. 420.

[7] Horn v. Arnett, 102 Atl. (N. J.) 366, 15 N. C. C. A. 228.

[8] Prendergast v. Berrian Bros., 171 N. Y. Supp. 700.

[9] Lowe v. Myers & Sons, (1906), 2 K. B. 265, 8 W. C. C. 22.

for making such proof, and the burden of proving his case is upon the claimant in all cases.[10]

The arbitrators or Board hearing the evidence must base the finding upon competent and legal evidence as tested by the elemental and fundamental principles of a judicial inquiry, and the burden is upon the claimant to establish his claim by such evidence.[11]

The proof must be made by direct and positive evidence, or by evidence of such character that an inference of liability may be fairly drawn without being based upon mere guess, conjecture or surmise;[12] but such evidence may be circumstantial.[13]

An award cannot be based upon speculation and conjecture or upon a choice between two views equally compatible with the evidence;[14] and if, from the evidence, it can be gathered with equal certainty that the workman met his death in some other manner than by some accident arising out of and in the course of the employment, the burden of proof resting upon the claimant has not been discharged.[15]

The fact that there is some legal evidence sustaining the issue on the part of the claimant is not sufficient to justify an award by the Commission unless the greater weight of all the evidence is in his favor; and it is the duty of the arbitrator or Commission to consider and weigh all the evidence produced and to decide according to its preponderance.[16]

10 Ohio Building Vault v. Industrial Board, 277 Ill. 96, 14 N. C. C. A. 99, 425, 430; C. & A. R. Co. v. Industrial Board, 274 Ill. 336, 14 N. C. C. A. 431, 541; Albaugh Dover Co. v. Industrial Board, 278 Ill. 179, 14 N. C. C. A. 130, 427, 545; Dragovich v. Iroquois Iron Co., 269 Ill. 484, 14 N. C. C. A. 427; Bryant v. Fissell, 86 Atl. (N. J.) 458, 3 N. C. C. A. 585; Marney v. Industrial Insurance Dept., 167 Pac. (Wash.) 1085; Draper v. Regents of U. of M., 161 N. W. (Mich.) 956, 14 N. C. C. A. 458, 933, 15 *Ibid*, 255.

11 Goclitz v. Industrial Board, 278 Ill. 164, 14 N. C. C. A. 99.

12 Northern Illinois I. & T. Co. v. Industrial Board, 279 Ill. 565, 15 N. C. C. A. 158; Savoy Hotel Co. v. Industrial Board, 279 Ill. 329, 16 N. C. C. A. 746, 17 *Ibid*, 251.

13 Peoria Terminal Co. v. Industrial Board, 279 Ill. 352, 15 N. C. C. A. 632.

14 Peterson & Co. v. Industrial Board, 282 Ill. 326, 15 N.C.C.A. 526.

15 Savoy Hotel Co. v. Industrial Board, 279 Ill. 329, 16 N. C. C. A. 746, 17 *Ibid*, 251.

16 Hafer Coal Co. v. Industrial

Where various theoretical conclusions may be drawn from the state of facts established, each being equally plausible, some indicating that the injury arose out of the employment and others that it was due to some other cause, it may not be said that the evidence is sufficient to sustain the case of him upon whom the burden of proof rests. A finding in such case in favor of the claimant is speculative and cannot be sustained.[17]

The arbitrator or Commission may not ignore proper evidence offered or omit passing upon decisive questions properly presented; and such action on the part of the arbitrator or Commission is equivalent to a mis-trial and will necessitate a new hearing.[18]

A theory cannot be said to be established by circumstantial evidence unless the facts relied on are of such a nature and are so related to each other that it is the only conclusion that can reasonably be drawn from them.[19]

A greater or less probability leading on the whole to a satisfactory conclusion is all that can reasonably be required to establish controverted facts.[20]

If the evidence is not direct the facts proven must be capable, as a matter of law, of sustaining the inferences drawn therefrom.[21]

No inference of fact or law is reliably drawn from premises which are uncertain;[22] and the law requires an

Com., 293 Ill. 425; Halsted v. Industrial Commission, 287 Ill. 509; McGarry v. I. C. R. Co., 290 Ill. 577.

17 Roebling's Sons Co. v. Industrial Acc. Com., 171 Pac. (Cal.) 987.

18 Saxon v. Erie R. R. Co., 166 N. Y. S. 983; Plass v. Central N. E. Ry. Co., 117 N. E. (N. Y.) 952, 11 N. C. C. A. 498, 14 *Ibid*, 141; Perry v. Woodward Bowling Alley Co., 163 N. W. (Mich.) 52, 17 N. C. C. A. 884; In re Dube, 116 N. E. (Mass.) 234, 15 N. C. C. A. 284.

19 Ohio Building Vault Co. v. Industrial Board, 277 Ill. 96, 14 N. C. C. A. 99, 425, 430; Neal v. Chicago Rock Island & Pacific Ry. Co., 129 Iowa 5.

20 Devine v. Delano, 272 Ill. 166, 17 N. C. C. A. 464; Hills v. Blair, 182 Mich. 20, 7 N. C. C. A. 409.

21 Ohio Building Vault Co. v. Industrial Board, 277 Ill. 96, 14 N. C. C. A. 99, 425, 430; Dragovitch v. Iroquois Iron Co., 269 Ill. 478, 14 N. C. C. A. 427; New Castle Foundry Co. v. Lysher, 120 N. E. (Ind. App.) 713, 17 N. C. C. A. 251, 791; Buhse v. W. & K. Iron Works, 160 N. E. (Mich.) 557, 16 N. C. C. A. 188.

22 United States v. Ross, 92 U. S. 281.

open and visible connection between the principal or evidentiary facts and the deductions from them, and does not permit a decision to be made on remote inferences;[23] and a presumption cannot be based on a presumption.[24]

Absolute proof or mathematical demonstration is, of course, not necessary;[25] and all possibility of accident by other causes than those covered by the Compensation Act need not be excluded by the evidence.[26]

The arbitrator or Commission is not bound to regard the greater number of witnesses but may weigh the evidence and accept the testimony of one witness and reject the testimony of others;[27] and the weight of the evidence does not present a question of law for the courts.[28] And if there is any competent evidence in the record, upon which the findings may be based, the courts will not weigh the evidence.[29] If the arbitrator or Commission deems certain facts sufficiently established by the preponderance of the evidence, it may draw reasonable inferences from such facts.[30] For example, when an employee left his home without any injury to his hand being evident and returned home at night with such an injury, and witnesses testified it looked like the wound was about two hours old, it was held that there were facts from which it might be inferred that the injury arose out of and in the course of the employment.[31]

Ultimate facts may be found by the arbitrator or Commission from evidentiary facts submitted, and definite testimony as to loss of earnings or earning capacity is neither essential nor proper.[32]

[23] Manning v. Insurance Co., 100 U. S. 693; Ohio Building Vault Co. v. Industrial Board, 277 Ill. 96, 14 N. C. C. A. 99, 425, 430.

[24] *Ibid.*

[25] Santa v. Industrial Acc. Com., 165 Pac. (Cal.) 689, 17 N. C. C. A. 260.

[26] In re Uzzie, 117 N. E. (Mass.) 349, 15 N. C. C. A. 234.

[27] Santa Ana Sugar Co. v. Industrial Acc. Com., 170 Pac. (Cal.) 630, 17 N. C. C. A. 876.

[28] O'Callaghan v. Industrial Commission, 290 Ill. 222.

[29] Chicago Steel Foundry Co. v. Industrial Commission, 286 Ill. 544.

[30] Swing v. Kokomo Steel & Iron Co., 125 N. E. (Ind. App.) 471.

[31] State ex rel. Albert Dickinson Co. v. District Court, 165 N. W. (Minn.) 478.

[32] In re Walsh, 116 N. E. (Mass.) 496, 15 N. C. C. A. 345, 1031; Peabody Coal Co. v. Industrial Commission, 289 Ill. 449; International

§ 253. Hearsay. Many years' experience in civil procedure under the common law has demonstrated the wisdom of the rule excluding hearsay testimony and, although the procedure in compensation cases is uniformly held to be liberal and informal, the authorities are agreed that hearsay evidence is not admissible and is not sufficient alone to discharge the burden of proof which rests upon the claimant.[33] The rule against the admission of hearsay testimony is not a "technical rule of evidence," as those terms are used in compensation laws. Hearsay is not evidence.[34]

For example, an injured workman's wife cannot testify to what her husband told her concerning the cause of the injury which resulted in his death,[35] or as to a conversation her husband had with his employer.[36]

Declarations by an injured person to his attending physician are admissible in evidence when they relate to the part of his body injured, his sufferings, symptoms, and the like, but not if they relate to the cause of the injury; and this rule is even more rigorously enforced when applied to lay witnesses.[37]

It has been held, however, that if hearsay evidence is admitted without objection, the employer or insurance

Coal & Min. Co. v. Industrial Com., 293 Ill. 524.

[33] Morris & Co. v. Industrial Board, 284 Ill. 67; C. & A. Ry. Co. v. Industrial Board, 274 Ill. 336, 14 N. C. C. A. 431, 541; Victor Chemical Works v. Industrial Board, 274 Ill. 11, 13 N. C. C. A. 552, 14 *Ibid*, 126, 777; Belcher v. Carthage Machine Co., 120 N. E. (N. Y.) 735, 17 N. C. C. A. 259; Englebretson v. Industrial Acc. Com., 151 Pac. (Cal.) 421; Reck v. Whittlesberger, 181 Mich. 463, 5 N. C. C. A. 917; Ginsburg v. Burroughs Adding Machine Co., 170 N. W. (Mich.) 15; Jillson v. Ross, 94 Atl. (R. I.) 717, 14 N. C. C. A. 143; Carroll v. Knickerbocker Ice Co., 218 N. Y. 435, 14 N. C. C. A. 426; Lindquest v. Holler, 164 N. Y. Supp. 906, 14 N. C. C. A. 432; Garfield Smelting Co. v. Industrial Commission, 178 Pac. (Utah) 57; Connelly v. Industrial Acc. Com., 160 Pac. (Cal.) 239, 14 N. C. C. A. 431, 15 *Ibid*, 490.

[34] Englebretson v. Industrial Acc. Com., 151 Pac. (Cal.) 421.

[35] Chicago Rawhide Co. v. Industrial Commission, 291 Ill. 616.

[36] Ohio Oil Co. v. Industrial Com., 293 Ill. 461.

[37] C. & A. Ry. Co. v. Industrial Board, 274 Ill. 336, 14 N. C. C. A. 431, 541; Chicago Packing Co. v. Industrial Board, 282 Ill. 497, 16 N. C. C. A. 696, 17 *Ibid*, 261; Peoria Cordage Co. v. Industrial Board, 284 Ill. 90, 17 N. C. C. A. 245, 791; Spiegel's House Furnishing Co. v. Industrial Commission, 288 Ill. 422.

carrier cannot afterwards complain that such evidence has no probative value.[38]

Statements made by an employee at the time of or immediately following the accident are admissible as a part of the *res gestae*.[39]

It has been said in a New Jersey case that it is not error to admit statements made by a deceased workman to fellow employees as to the cause of the accident made immediately after the accident happened and before or during the time his wounds were being dressed; and that in such cases statements are regarded as incidents or emanations of the accident and, if spontaneous and unconflicting in character and made before the deceased has had time to invent or misrepresent, they are regarded as admissible.[40]

§ 254. Documentary evidence. The coroner's verdict is held admissible in some jurisdictions but is no longer admissible in Illinois for the purpose of establishing personal liability against any individual where the death of a person is charged, or to establish a defense to such suits, or for the purpose of establishing other issues between private litigants;[41] but, even where such verdict is admissible in evidence, the coroner is not authorized to hold an inquest over a body where the man died of disease and there is no reasonable supposition that he came to his death by violence.[42]

Books and records are admissible in compensation proceedings in the same manner as in other civil cases, but they must be competent and properly authenticated;[43] and it has been held that the accident report made by the employer to the state or his insurance car-

[38] Hernon v. Holahan, 169 N. Y. Supp. 705, 17 N. C. C. A. 1002; Hage & Co. v. Tompkins, 121 N. E. (Ind. App.) 677.

[39] Southwestern Surety Ins. Co. v. Owens, 198 S. W. (Tex.) 662, 17 N. C. C. A. 258, 266.

[40] Murphy v. Geo. Brown & Co., 103 Atl. (N. J.) 28.

[41] Spiegels House Furnishing Co. v. Industrial Commission, 288 Ill. 422.

[42] Peoria Cordage Co. v. Industrial Board, 284 Ill. 90, 17 N. C. C. A. 245, 791; Albaugh Dover Co. v. Industrial Board, 278 Ill. 179, 14 N. C. C. A. 130, 427, 545.

[43] Victor Chemical Works v. Industrial Board, 273 Ill. 11, 13 N. C. C. A. 552, 14 *Ibid*, 126, 777.

rier is admissible in evidence to prove the accidental character of the injury.[44] But the arbitrator or Commission is not authorized to appoint an investigator to go outside and take evidence without notice to the parties in interest and without giving an opportunity for cross-examination.[45] And an award based upon an unsworn report of a physician appointed by the Commission without any opportunity for cross-examination is invalid.[46]

Under the New York statute, which provides that the Commission shall not be bound by the common law or statutory rules of evidence, affidavits have been held admissible and hearsay evidence is considered.[47] And it has been held in Illinois that statements of the employer's foreman as to the nature of the employee's work or employment made to a police officer are competent.[48]

§ 255. Medical evidence, etc. It has been said that expert evidence is legal and competent evidence and is to be received, treated and weighed precisely as other evidence by triers of fact in this character of cases and by juries in cases at law; that the weight of such testimony should be determined by the character, capacity, skill and opportunities for observation and the state of mind of the experts themselves as seen and heard and estimated by the triers of fact, and where the facts are proved altogether by expert witnesses and they are wholly uncontradicted and the witnesses all appear to be fair and unbiased, competent and well skilled in their profession and

[44] Reck v. Whittlesberger, 181 Mich. 463, 5 N. C. C. A. 917; In re Matthewson, 116 N. E. (Mass.) 831, 17 N. C. C. A. 84; In re Brown, 116 N. E. (Mass.) 897, 17 N. C. C. A. 84; Ginsburg v. Burroughs Adding Machine Co., 170 N. W. (Mich.) 15; Milwaukee First National Bank v. Industrial Commission, 161 Wis. 526; Fitzgerald v. Lozier Motor Co., 187 Mich. 660; Hage & Co. v. Tompkins, 121 N. E. (Ind. App.) 677; Eggers Vender Seat Co. v. Industrial Commission, 170 N. W. (Wis.) 280.

[45] Bereba v. Industrial Board, 275 Ill. 514, 16 N. C. C. A. 750.

[46] Flynn v. Ponca City Milling Co., 177 Pac. (Okla.) 366.

[47] Moran v. Rogers & Haggerty, 168 N. Y. Supp. 410, 16 N. C. C. A. 188, 17 *Ibid*, 263; Carroll v. Knickerbocker Ice Co., 155 N. Y. Supp. 1, 14 N. C. C. A. 426.

[48] Baers Express Co. v. Industrial Board, 282 Ill. 44, 17 N. C. C. A. 258, 259.

fully capable of giving correct information and opinions based upon actual facts, there is no good reason for holding that the court may disregard such evidence.[49]

In a Michigan case four judges out of eight held that the unsupported statement of one doctor, with which the other doctors did not agree, was a mere expression by the doctor of his theory of the case, which was not supported by the evidence.[50]

Where there is no satisfactory evidence and medical witnesses available are not called or their absence explained, the award will be set aside.[51]

An allegation made by a claimant in a suit against a doctor for malpractice that the injury resulted from the malpractice and not from the accident is not conclusive against his claim for compensation but may be considered in connection with other evidence.[52]

§ 256. Miscellaneous rules of practice, etc. It has been held that the ordinary rules of practice in civil cases will be followed in compensation cases, unless in conflict with the provisions of the statute.[53]

A bill of exceptions, however, is not necessary to preserve for review the proceedings of the Circuit Court, in review proceedings by *certiorari*.[54]

Findings of fact may be requested under some statutes,[55] in which case the courts may review the action of the arbitrator or Board in finding or omitting to find certain facts, whereby the result would be changed.[56] It is

[49] Peabody Coal Co. v. Industrial Commission, 289 Ill. 449. *Note:* Rules as to physicians testifying upon hypothetical questions stated in Kimbrough v. Chicago City Ry. Co., 272 Ill. 71, and Squire-Durgee Co. v. Industrial Board, 281 Ill. 359.

[50] Miller v. Acme White Lead & Color Works, 164 N. W. (Mich.) 432.

[51] Scheer v. Holmes, 164 N. W. (Mich.) 423, 15 N. C. C. A. 526.

[52] Smith v. Battjes Fuel & Building Material Co., 169 N. W. (Mich.) 943.

[53] Savoy Hotel Co. v. Industrial Board, 279 Ill. 329, 16 N. C. C. A. 746, 17 *Ibid*, 251.

[54] Sanitary District v. Industrial Board, 282 Ill. 182, 16 N. C. C. A. 697; City of Pana v. Industrial Board, 279 Ill. 279, 16 N. C. C. A. 813. *Contra:* Two Rivers Coal Co. v. Vaughn, 200 Ill. App. 647.

[55] See § 19 (e), Ill. Act.

[56] Swanson v. Latham & Crane, 101 Atl. (Conn.) 492, 15 N. C. C. A. 245.

better practice to request findings of fact if such findings are to be challenged in the courts upon review;[57] and the triers of questions of fact should make findings of fact to support their awards, and not merely state their conclusions,[57a] but it would seem the courts would have no power to annul an award merely because the findings of the arbitrator or Board were inconsistent, if the ultimate finding is sustained by evidence.[58] Under the Illinois practice, propositions of law need not be submitted to the court in accordance with the practice in civil cases, as it is held that this practice applies only where there is a right of trial by jury which has been waived.[59]

Under the Illinois practice a praecipe in proper form is essential to the court's jurisdiction in cases of review;[60] and a motion to quash is the proper practice where there has been no proper praecipe filed and the writ is issued in the wrong county.[61] The Industrial Commission is not a party in interest in *certiorari* proceedings in the Circuit Court so as to give the person asking for review in such court the right to proceed in the county where the Industrial Board may be found.[62]

The motion to quash the writ of *certiorari* must be supported by a showing that the facts recited in the motion are true and in the absence of such a showing the statements in the writ will be presumed to be correct.[63]

A change of venue may be ordered by the court, where the *certiorari* proceedings have been instituted in the wrong county.[64]

If *certiorari* proceedings are not started within the time fixed by the statute, the right of review by the courts

[57] Dunnewald v. Henry Steers, Inc., 99 Atl. (N. J.) 345, 14 N. C. C. A. 1031.

[57a] Illinois Midland Coal Co. v. Industrial Board, 277 Ill. 333.

[58] Southern Pac. Co. v. Industrial Acc. Com., 170 Pac. (Cal.) 822, 16 N. C. C. A. 891.

[59] Sanitary District v. Industrial Board, 282 Ill. 182, 16 N. C. C. A. 697.

[60] L. & N. R. R. Co. v. Industrial Board, 282 Ill. 136, 16 N. C. C. A. 816.

[61] *Ibid.*

[62] Arcade Mfg. Co. v. Industrial Board, 282 Ill. 27, 16 N. C. C. A. 816.

[63] Fruit v. Industrial Board, 284 Ill. 154, 16 N. C. C. A. 685.

[64] Central Ill. Service Co. v. Industrial Com., 293 Ill. 62.

will be lost, even though it appears from the record that the Commission had no jurisdiction.[65]

Questions of jurisdiction of the Commission cannot first be raised in the Supreme Court.[66]

After a writ of error in the Supreme Court under the Illinois practice has been made a *supersedeas,* the Circuit Court cannot amend its order to conform to an amendment of the award by the Industrial Commission;[67] and the Circuit Court has no authority to enter a money judgment and issue an execution upon confirming an award of the Industrial Commission.[68]

A motion to vacate a judgment entered upon an award, which judgment was entered after due notice to the employer is addressed to the discretion of the court, and where no good reason is shown why the payments of compensation were not made to the claimant or why there was no appearance to contest the application for judgment on the award, there is no abuse of discretion on the part of the court in denying the motion to vacate the judgment.[69]

It has been held in New York that the Commission not only has the right but it is its duty to modify an unjust award made under a mistake of fact, although the employee's time for review has expired.[70]

An objection that the amount of compensation is excessive cannot be raised for the first time in the Supreme Court;[71] but the Industrial Commission has no jurisdiction to apply the Compensation Act to persons not subject to its provisions and, for the purpose of determining the question of jurisdiction, the courts may review all evidence certified in the record;[72] but the weight of the

[65] Northern Pac. S. S. Co. v. Industrial Acc. Com., 168 Pac. (Cal.) 30.

[66] Chicago Packing Co. v. Industrial Board, 282 Ill. 497, 16 N. C. C. A. 696, 17 *Ibid,* 261.

[67] Rosenthal Co. v. Industrial Commission, 290 Ill. 323.

[68] Rosenthal Co. v. Industrial Commission, 290 Ill. 323; Otis Elevator Co. v. Industrial Commission, 288 Ill. 396.

[69] Liberty Foundries Co. v. Industrial Commission, 289 Ill. 601.

[70] Kriegbaum v. Buffalo Wire Works Co., 169 N. Y. Supp. 307, 16 N. C. C. A. 353.

[71] Albuquerque-Cerrillos Coal Co. v. Lermusezux, 187 Pac. (New Mex.) 560.

[72] Thede Bros. v. Industrial Commission, 285 Ill. 483; Paul v. Industrial Commission, 288 Ill. 532.

evidence does not present a question of law for the courts.[73]

A new trial should be awarded for newly discovered evidence where proper affidavits are filed setting forth its materiality and that due diligence was exercised before the trial to discover it, without success.[74]

A writ of error is not a trial *de novo* but is merely a hearing for the correction of errors found to exist in the record, and the issuing out of a writ of error does not vacate the award; and the right to review the award under Section 19 (h) of the Illinois Act on the ground that the disability has increased or decreased is not held in abeyance by proceedings by writ of error.[75]

The authority of an administrator to act cannot be questioned collaterally in a proceeding by the administrator under the Workmen's Compensation Act.[76]

An award for compensation should not be set aside for errors of procedure only.[77]

[73] O'Callahan v. Industrial Commission, 290 Ill. 222.

[74] American Indemnity Co. v. Hubbard, 196 S. W. (Tex.) 1011.

[75] Big Muddy Coal & Iron Co. v. Industrial Commission, 289 Ill. 515.

[76] Keystone Steel & Wire Co. v. Industrial Commission, 289 Ill. 587.

[77] Mesmer & Rice v. Industrial Acc. Com., 173 Pac. (Cal.) 1099, 17 N. C. C. A. 264.

CHAPTER XXVII

THE ILLINOIS WORKMEN'S COMPENSATION ACT, 1919

(Laws Ill. 1919, p. 538.)

(See *ante*, p. 19, for the Act with annotations.)

AN ACT *to promote the general welfare of the people of this State by providing compensation for accidental injuries or death suffered in the course of employment within this State; providing for the enforcement and administering thereof, and a penalty for its violation, and repealing an Act entitled, "An Act to promote the general welfare of the people of this State by providing compensation for accidental injuries or death suffered in the course of employment," approved June 10, 1911, in force May 1, 1912.* [*Approved June 28, 1913, with amendments in force July 1, 1919.*

SECTION 1. EMPLOYER—NOTICE.] That an employer in this State, who does not come within the classes enumerated by section three (3) of this Act, may elect to provide and pay compensation for accidental injuries sustained by any employee arising out of and in the course of the employment according to the provisions of this Act, and thereby relieve himself from any liability for the recovery of damages, except as herein provided.

(a) Election by any employer to provide and pay compensation according to the provisions of this Act shall be made by the employer filing notice of such election with the Industrial Board.

(b) Every employer within the provisions of this Act who has elected to provided [provide] and pay compensation according to the provisions of this Act, shall be bound thereby as to all his employees covered by this Act until January 1st of the next succeeding year and for terms of each year thereafter: *Provided,* any such employer who may have once elected, may elect not to provide and pay the compensation herein provided for accidents resulting in either injury or death and

occurring after the expiration of any such calendar year by filing notice of such election with the Industrial Board at least sixty days prior to the expiration of any such calendar year, and by posting such notice at a conspicuous place in the plant, shop, office, room or place where such employee is employed, or by personal service, in written or printed form, upon such employee, at least sixty (60) days prior to the expiration of any such calendar year.

(c) In the event any employer mentioned in this section elects to provide and pay the compensation provided in this Act, then every employee of such employer, as a part of his contract of hiring or who may be employed at the time of the taking effect of this Act and the acceptance of its provisions by such employer, shall be deemed to have accepted all the provisions of this Act and shall be bound thereby unless within thirty (30) days after such hiring or after the taking effect of this Act, and its acceptance by such employee, he shall file a notice to the contrary with the Industrial Board, whose duty it shall be to immediately notify the employer, and until such notice to the contrary is given to the employer, the measure of liability of such employer shall be determined according to the compensation provisions of this Act: *Provided, however,* that any employee may withdraw from the operation of this Act upon filing a written notice of withdrawal at least ten (10) days prior to January 1st of any year with the Industrial Board, whose duty it shall be to immediately notify such employer by registered mail, and, until such notice to the contrary is given to such employer, the measure of liability of such employer shall be determined according to the compensation provisions of this Act.

(d) Any such employer or employee may, without prejudice to any existing right or claim, withdraw his election to reject this Act by giving thirty (30) days' written notice in such manner and form as may be provided by the Industrial Board. [Amended by Act approved June 25, 1917.

§ 2. REPEALED.] Section two of an Act entitled, "An Act to promote the general welfare of the people of this State by providing compensation for accidental injuries or death suffered in the course of employment within this State; providing for the enforcement and administering thereof, and a penalty for its violation, and repealing an Act entitled, 'An Act to promote the general welfare of the people of this State by providing compensation for accidental injuries or death suffered in the course of employment, approved June 10, 1911, in force May 1, 1912,' " approved June 28, 1913, in force July 1, 1913, as sub-

sequently amended, is hereby repealed. [Amended by Act approved June 25, 1917.

§ 3. APPLIES AUTOMATICALLY.] The provisions of this Act hereafter following shall apply automatically, and without election to the State, county, city, town, township, incorporated village or school district, body politic or municipal corporation, and to all employers and their employees, engaged in any of the following enterprises or businesses which are declared to be extra hazardous, namely:

1. The erection, maintaining, removing, remodeling, altering or demolishing of any structure, except as provided in sub-paragraph 8 of this section.

2. Construction, excavating or electrical work, except as provided in sub-paragraph 8 of this section.

3. Carriage by land or water and loading or unloading in connection therewith, including the distribution of any commodity by horse-drawn or motor driven vehicle where the employer employs more than three employees in the enterprise or business, except as provided in sub-paragraph 8 of this section.

4. The operation of any warehouse or general or terminal store houses.

5. Mining, surface mining or quarrying.

6. Any enterprise in which explosive-materials are manufactured, handled or used in dangerous quantities.

7. In any enterprise wherein molten metal, or explosive or injurious gases or vapors, or inflammable vapors or fluids, or corrosive acids, are manufactured, used, generated, stored or conveyed in dangerous quantities.

8. In any enterprise in which statutory or municipal ordinance regulations are now or shall hereafter be imposed for the regulating, guarding, use or the placing of machinery or appliances or for the protection and safeguarding of the employees or the public therein; each of which occupations, enterprises or businesses are hereby declared to be extra hazardous; *Provided*, nothing contained herein shall be construed to apply to any work, employment or operations done, had or conducted by farmers and others engaged in farming, tillage of the soil, or stock raising, or to those who rent, demise or lease land for any such purposes, or to any one in their employ or to any work done on a farm, or country place, no matter what kind of work or service is being done or rendered. [Amended by Act approved June 28, 1919.

§ 3½. PLEADINGS—CERTIFICATE.] (a) If the plaintiff in any action mentioned in section 3 shall in his declaration or in his

other pleading allege that the employer has filed notice of his election not to provide any pay compensation according to the provisions of the Workmen's Compensation Act and such allegation be not denied by a verified pleading, then such employer shall for the purpose of that action be conclusively presumed to have filed his notice of non-election.

(b) A certificate of the fact of the filing by an employer of the notice of non-election provided in section 2 and of the non-withdrawal thereof shall be *prima facie* proof in any action mentioned in section 3 of the fact of the filing of such notice of non-election and of the non-withdrawal thereof. Such certificate may be under the seal of the Industrial Board and signed by any member of the secretary thereof, of which seal and signature as such officer the court shall take judicial notice. Said certificate may be in substantially the following form:

This is to certify that the attached is a correct copy of notice filed with the Industrial Board by ..... on the ..... day of ....., 19..., electing not to provide and pay compensation according to the provisions of the Workmen's Compensation Act of Illinois, and that the original of said notice is now on file in the office of the Industrial Board and has not been withdrawn since the date of the filing thereof.

In witness whereof, this certificate has been subscribed and the seal of the Industrial Board affixed this.....day of ....., 19....

.....,

.....of Industrial Board.

[Amended by Act approved May 31, 1917.

§ 4. TERM "EMPLOYER" HOW CONSTRUED.] The term "employer" as used in this Act shall be construed to be:

First—The State, and each county, city, town, township, incorporated village, school district, body politic, or municipal corporation therein.

Second—Every person, firm, public or private corporation, including hospitals, public service, eleemosynary, religious or charitable, corporations or associations who has any person in service or under any contract for hire, express or implied, oral or written, and who is engaged in any of the enterprises or businesses enumerated in section three (3) of this Act, or who at or prior to the time of the accident to the employee for which compensation under this Act may be claimed, shall in the manner provided in this Act, have elected to become subject to the provisions of this Act, and who shall not, prior to such acci-

dent, have effected a withdrawal of such election in the manner provided in this Act. [Amended by Act approved June 25, 1917.

§ 5. TERM "EMPLOYEE"—HOW CONSTRUED.] The term "employee" as used in this Act, shall be construed to mean:

First—Every person in the service of the State, county, city, town, township, incorporated village or school district, body politic or municipal corporations therein, under appointment, or contract of hire, express or implied, oral or written, except any official of the State, or of any county, city, town, township, incorporated village, school district, body politic or municipal corporation therein: *Provided*, that any such employee, his personal representative, beneficiaries or heirs, who is, are or shall be entitled to receive a pension or benefit for or on account of disability or death arising out of or in the course of his employment from a pension or benefit fund to which the State or county, town, township, incorporated village, school district, body politic or municipal corporation therein is a contributor, in whole or in part, shall be entitled to receive only such part of pension or benefit as in excess of the amount of compensation recovered and received by such employee, his personal representative, beneficiaries or heirs under this Act: *And, provided, further*, that one employed by a contractor who has contracted with the State, or a county, city, town, township, incorporated village, school district, body politic or municipal corporation, therein, through its representatives, shall not be considered, as an employee of the State, county, city, town, township, incorporated village, school district, body politic or municipal corporation which made the contract.

Second—Every person in the service of another under any contract of hire, express or implied, oral or written, including aliens, and minors who are legally permitted to work under the laws of the State, who, for the purpose of this Act, shall be considered the same and have the same power to contract, receive payments and give quittances therefor, as adult employees, but not including any person who is not engaged in the usual course of the trade, business, profession or occupation of his employer: *Provided*, that employees shall not be included within the provisions of this Act when excluded by the laws of the United States relating to liability of employers to their employees for personal injuries where such laws are held to be exclusive. [Amended by Act approved May 31, 1917.

§ 6. EMPLOYEE'S RIGHT TO RECOVER DAMAGES.] No common law or statutory right to recover damages for injury or death

sustained by any employee while engaged in the line of his duty as such employee other than the compensation herein provided shall be available to any employee who is covered by the provisions of this Act, to any one wholly or partially dependent upon him, the legal representatives of his estate, or any one otherwise entitled to recover damages for such injury.

§ 7. AMOUNT OF COMPENSATION FOR INJURY RESULTING IN DEATH.] The amount of compensation which shall be paid for an injury to the employee resulting in death shall be:

(a) If the employee leaves any widow, child or children whom he was under legal obligations to support at the time of his injury, a sum equal to four times the average annual earnings of the employee, but not less in any event than one thousand six hundred fifty dollars and not more in any event than three thousand five hundred dollars. Any compensation payments other than necessary medical, surgical or hospital fees or services shall be deducted in ascertaining the amount payable on death.

(b) If no amount is payable under paragraph (a) of this section and the employee leaves any parent, husband, child or children who at the time of injury were totally dependent upon the earnings of the employee, then a sum equal to four times the average annual earnings of the employee, but not less in any event than one thousand six hundred fifty dollars, and not more in any event than three thousand five hundred dollars.

(c) If no amount is payable under paragraphs (a) or (b) of this section and the employee leaves any parent, child or children, grandparent or grandchild, who at the time of injury were dependent upon the earnings of the employee, then such proportion of a sum equal to four times the average annual earnings of the employee as such dependency bears to total dependency, but not less in any event than one thousand six hundred fifty dollars and not more in any event than three thousand five hundred dollars. Any compensation payments other than necessary medical, surgical or hospital fees or services shall be deducted in ascertaining the amounts payable on death.

(d) If no amount is payable under paragraphs (a), (b) or (c) of this section and the employee leaves collateral heirs dependent at the time of the injury to the employee upon his earnings, such a percentage of the sum provided in paragraph (a) of this section as the average annual contributions which the deceased made to the support of such dependent collateral heirs during the two years preceding the injury bears to his average annual earnings during such two years.

(e) If no amount is payable under paragraphs (a), (b), (c)

or (d) of this section, a sum not to exceed one hundred and fifty dollars for burial expenses to be paid by the employer to the undertaker or to the person or persons incurring the expense of burial.

(f) For all compensation, except for burial expenses provided in this section to be paid in case injury results in death, shall be paid in installments equal to one-half the average earnings, at the same intervals at which the wages or earnings of the employee were paid; or if this shall not be feasible, then the installments shall be paid weekly: *Provided,* such compensation may be paid in a lump sum upon petition as provided in section 9 of this Act.

(g) The compensation to be paid for injury which results in death, as provided in this section, shall be paid to the persons who form the basis for determining the amount of compensation to be paid by the employer, the respective shares to be in the proportion of their respective dependency at the time of the injury on the earnings of the deceased. *Provided* that the Industrial Commission or an arbitrator thereof may, in its or his discretion, order or award the payment to the parent or grandparent of a child for the latter's support the amount of compensation which but for such order or award would have been paid to such child as its share of the compensation payable, which order or award may be modified from time to time by the Commission in its discretion with respect to the persons to whom shall be paid the amount of said order or award remaining unpaid at the time of said modification.

The payments of compensation by the employer in accordance with the order or award of the Industrial Commission shall discharge such employer from all further obligation as to such compensation.

In a case where any of the persons who would be entitled to compensation is living at any place outside of the United States, then payment shall be made to the personal representative of the deceased employee. The distribution by such personal representative to the persons entitled shall be made to such persons and in such manner as the Commission shall order.

(h) 1. Whenever in paragraph (a) of this section a minimum of one thousand six hundred fifty dollars is provided, such minimum shall be increased in the following cases to the following amounts:

One thousand seven hundred fifty dollars in case of a widow and one child under the age of 16 years at the time of the death of the employee.

One thousand eight hundred fifty dollars in case of a widow and two or more children under the age of 16 years at the time of the death of the employee.

2. Wherever in paragraph (a) of this section a maximum of three thousand five hundred dollars is provided, such maximum shall be increased in the following cases to the following amounts:

Three thousand seven hundred fifty dollars in case of a widow and one child under the age of 16 years at the time of the death of the employee.

Four thousand dollars in case of a widow and two or more children under the age of 16 years at the time of the death of the employee. [Amended by Act approved June 28, 1919.

§ 8. AMOUNT OF COMPENSATION.] The amount of compensation which shall be paid to the employee for an injury not resulting in death shall be:

(a) The employer shall provide the necessary first aid medical and surgical services; all necessary hospital services during the period for which compensation may be payable; also all necessary medical and surgical services for a period not longer than eight weeks, not to exceed, however, an amount of two hundred dollars, and in addition such medical or surgical services in excess of such limits as may be necessary during the time such hospital services are furnished. All of the foregoing services shall be limited to those which are reasonably required to cure and relieve from the effects of the injury. The employee may elect to secure his own physician, surgeon or hospital services at his own expense.

(b) If the period of temporary total incapacity for work lasts for more than six working days, compensation equal to fifty per-centum of the earnings, but not less than $7.00 nor more than $12.00 per week, beginning on the eighth day of such temporary total incapacity, and continuing as long as the temporary total incapacity lasts, but not after the amount of compensation paid equals the amount which would have been payable as a death benefit under paragraph (a), section 7, if the employee had died as a result of the injury at the time thereof, leaving heirs surviving as provided in said paragraph (a), section 7: *Provided,* that in the case where temporary total incapacity for work continues for a period of four weeks from the day of the injury, then compensation shall commence on the day after the injury.

(c) For any serious and permanent disfigurement to the hand, head or face, the employee shall be entitled to compensation for such disfigurement, the amount fixed by agreement or by arbitra-

tion in accordance with the provisions of this Act, which amount shall not exceed one-quarter of the amount of the compensation which would have been payable as a death benefit under paragraph (a), section 7, if the employee had died as a result of the injury at the time thereof, leaving heirs surviving, as provided in said paragraph (a), section 7: *Provided,* that no compensation shall be payable under this paragraph where compensation is payable under paragraph (d), (e) or (f) of this section: *And, provided, further,* that when the disfigurement is to the hand, head or face as a result of any injury, for which injury compensation is not payable under paragraph (d), (e) or (f) of this section, compensation for such disfigurement may be had under this paragraph.

(d) If, after the injury has been sustained, the employee as a result thereof becomes partially incapacitated from pursuing his usual and customary line of employment, he shall, except in the cases covered by the specific schedule set forth in paragraph (e) of this section, receive compensation, subject to the limitations as to time and maximum amounts fixed in paragraphs (b) and (h) of this section, equal to fifty percentum of the difference between the average amount which he earned before the accident, and the average amount which he is earning or is able to earn in some suitable employment or business after the accident.

(e) For injuries in the following schedule, the employee shall receive in addition to compensation during the period of temporary total incapacity for work resulting from such injury, in accordance with the provisions of paragraphs (a) and (b) of this section, compensation, for a further period, subject to the limitations as to time and amounts fixed in paragraphs (b) and (h) of this section, for the specific loss herein mentioned, as follows, but shall not receive any compensation for such injuries under any other provisions of this Act.

1. For the loss of a thumb, or the permanent and complete loss of its use, fifty percentum of the average weekly wage during sixty weeks;

2. For the loss of a first finger, commonly called the index finger, or the permanent and complete loss of its use, fifty per centum of the average weekly wage during thirty-five weeks;

3. For the loss of a second finger, or the permanent and complete loss of its use, fifty per centum of the average weekly wage during thirty weeks;

4. For the loss of a third finger, or the permanent and complete loss of its use, fifty percentum of the average weekly wage during twenty weeks;

5. For the loss of a fourth finger, commonly called the little finger, or the permanent and complete loss of its use, fifty per-centum of the average weekly wage during fifteen weeks;

6. The loss of the first phalange of the thumb, or of any finger shall be considered to be equal to the loss of one-half of such thumb or finger and compensation shall be one-half the amounts above specified;

7. The loss of more than one phalange shall be considered as the loss of the entire finger or thumb; *Provided, however,* that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand;

8. For the loss of a great toe, fifty percentum of the average weekly wage during thirty weeks;

9. For the loss of one toe other than the great toe, fifty per-centum of the average weekly wage during ten weeks, and for the additional loss of one or more toes other than the great toe, fifty percentum of the average weekly wage during an additional ten weeks;

10. The loss of the first phalange of any toe shall be considered to be the equal to the loss of one-half of such toe, and compensation shall be one-half of the amount above specified;

11. The loss of more than one phalange shall be considered as the loss of the entire toe;

12. For the loss of a hand, or the permanent and complete loss of its use, fifty percentum of the average weekly wage during one hundred and fifty weeks;

13. For the loss of an arm or the permanent and complete loss of its use, fifty percentum of the average weekly wage during two hundred weeks;

14. For the loss of a foot, or the permanent and complete loss of its use, fifty percentum of the average weekly wage during one hundred and twenty-five weeks;

15. For the loss of a leg, or the permanent and complete loss of its use, fifty percentum of the average weekly wage during one hundred and seventy-five weeks;

16. For the loss of the sight of an aye or for the permanent and complete loss of its use, fifty percentum of the average weekly wage during one hundred weeks;

17. For the permanent partial loss of use of a member or sight of an eye, fifty percentum of the average weekly wage during that portion of the number of weeks in the foregoing schedule provided for the loss of such member or sight of an eye which

the partial loss of use thereof bears to the total loss of use of such member or sight of eye.

18. The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof, or the permanent and complete loss of use thereof, shall constitute total and permanent disability, to be compensated according to the compensation fixed by paragraph (f) of this section: *Provided*, that these specific cases of total and permanent disability shall not be construed as excluding other cases.

(f) In case of complete disability, which renders the employee wholly and permanently incapable of work, compensation equal to fifty percentum of his earnings, but not less than $7.00 nor more than $12.00 per week, commencing on the day after the injury, and continuing until the amount paid equals the amount which would have been payable as a death benefit under paragraph (a), section 7, if the employee had died as a result of the injury at the time thereof, leaving heirs surviving as provided in said paragraph (a), section 7, and thereafter a pension during life annually equal to 8 per cent of the amount which would have been payable as a death benefit under paragraph (a), section 7, if the employee had died as a result of the injury at the time thereof, leaving heirs surviving, as provided in said paragraph (a), section 7. Such pension shall not be less than $10.00 per month and shall be payable monthly.

(g) In case death occurs as a result of the injury before the total of the payments made equals the amount payable as a death benefit, then in case the employee leaves any widow, child, or children, parents, grandparents or other lineal heirs, entitled to compensation under section 7, the difference between the compensation for death and the sum of the payments made to the employee shall be paid, at the option of the employer, either to the personal representative or to the beneficiaries of the deceased employee, and distributed, as provided in paragraph (f) of section 7, but in no case shall the amount payable under this paragraph be less than $500.00.

(h) In no event shall the compensation to be paid exceed fifty percentum of the average weekly wage or exceed $12.00 per week in amount; nor, except in case of complete disability, as defined above, shall any payments extend over a period of more than eight years from the date of the accident. In case an injured employee shall be incompetent at the time when any right or privilege accrues to him under the provisions of this Act a conservator or guardian may be appointed, pursuant to law, and may, on behalf of such incompetent, claim and exercise any such

right or privilege with the same force and effect as if the employee himself had been competent and had claimed or exercised said right or privilege; and no limitations of time by this Act provided shall run so long as said incompetent employee is without a conservator or a guardian.

(i) All compensation provided for in paragraphs (b), (c), (d), (e), and (f) of this section, other than cases of pension for life, shall be paid in installments at the same intervals at which the wages or earnings of the employee were paid at the time of the injury, or if this shall not be feasible, then the installments shall be paid weekly.

(j) 1. Wherever in this section there is a provision for fifty percentum, such percentum shall be increased five percentum for each child of the employee under 16 years of age at the time of the injury to the employee until such percentum shall reach a maximum of sixty-five percentum.

2. Wherever in this section a weekly minimum of $7.00 is provided, such minimum shall be increased in the following cases to the following amounts:

$8.00 in case of any employee having one child under the age of 16 years at the time of the injury to the employee;

$9.00 in a case of an employee having two children under the age of 16 years at the time of the injury to the employee;

$10.00 in a case of an employee having three or more children under the age of 16 years at the time of the injury to the employee.

3. Wherever in this section a weekly maximum of $12.00 is provided, such maximum shall be increased in the following cases to the following amounts:

$13.00 in case of an employee with one child under the age of 16 years at the time of the injury to the employee;

$14.00 in case of an employee with two children under the age of 16 years at the time of injury to the employee.

$15.00 in case of an employee with three or more children under the age of 16 years at the time of injury to the employee.

4. The increases in the above percentum and the minimum and maximum amounts shall be paid only so long as the child upon which the increase is based remains under the age of 16 years. [Amended by Act approved June 28, 1919.

§ 9. WHERE PAYMENT IN LUMP SUM DESIRED.] Any employer or employee or beneficiary who shall desire to have such compensation, or any unpaid part thereof, paid in a lump sum, may petition the Industrial Board, asking that such compensation be so paid, and if, upon proper notice to the interested parties and

a proper showing made before such board, it appears to the interest of the parties that such compensation be so paid, the board may order the commutation of the compensation to an equivalent lump sum, which commutation shall be an amount which will equal the total sum of the probable future payments capitalized at their present value upon the basis of interest calculated at three per centum per annum with annual rests: *Provided,* that in cases indicating complete disability no petition for a commutation to a lump sum basis shall be entertained by the Industrial Board until after the expiration of six months from the date of the injury, and where necessary, upon proper application being made, a guardian, conservator or administrator, as the case may be, may be appointed for any person under disability who may be entitled to any such compensation, and an employer bound by the terms of this Act, and liable to pay such compensation, may petition for the appointment of the public administrator, or a conservator, or guardian, where no legal representa- under disability. Either party may reject an award of a lump sum payment of compensation, except an award for compensation under section 7 or paragraph (e) of section 8 or for the injuries defined in the last paragraph of paragraph (e) of section 8 as constituting total and permanent disability, by filing his written rejection thereof with the said board within ten days tive has been appointed or is acting for such party or parties so after notice to him of the award, in which event compensation shall be payable in installments as herein provided. [As amended by Act approved June 28, 1915; in force July 1, 1915.

§ 10. BASIS FOR COMPUTING COMPENSATION.] The basis for computing the compensation provided for in sections 7 and 8 of the Act shall be as follows:

(a) The compensation shall be computed on the basis of the annual earnings which the injured person received as salary, wages or earnings if in the employment of the same employer continuously during the year next preceding the injury.

(b) Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the employee was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause.

(c) If the injured person has not been engaged in the employment of the same employer for the full year immediately preceding the accident, the compensation shall be computed according to the annual earnings which persons of the same class in the same employment and same location, (or if that be im-

practicable, of neighboring employments of the same kind) have earned during such period.

(d) As to employees in employments in which it is the custom to operate throughout the working days of the year, the annual earnings, if not otherwise determinable, shall be regarded as 300 times the average daily earnings in such computation.

(e) As to employees in employments in which it is the custom to operate for a part of the whole number of working days in each year, such number, if the annual earnings are not otherwise determinable, shall be used instead of 300 as a basis for computing the annual earnings: *Provided,* the minimum number of days which shall be so used for the basis of the year's work shall not be less than 200.

(f) In the case of injured employees who earn either no wage or less than the earnings of adult day laborers in the same line of employment in that locality, the yearly wage shall be reckoned according to the average annual earning of adults of the same class in the same (or if that is impracticable then of neighboring) employments.

(g) Earnings, for the purpose of this section, shall be based on the earnings for the number of hours commonly regarded as a day's work for that employment, and shall exclude overtime earnings. The earnings shall not include any sum which the employer has been accustomed to pay the employee to cover any special expense entailed on him by the nature of his employment.

(h) In computing the compensation to be paid to any employee, who, before the accident for which he claims compensation, was disabled and drawing compensation under the terms of this Act, the compensation for each subsequent injury shall be apportioned according to the proportion of incapacity and disability caused by the respective injuries which he may have suffered.

(i) To determine the amount of compensation for each installment period, the amount per annum shall be ascertained pursuant hereto, and such amount divided by the number of installment periods per annum.

§ 11. COMPENSATION MEASURE OF RESPONSIBILITY EMPLOYER ASSUMED UNDER ACT.] The compensation herein provided, together with the provisions of this Act shall be the measure of the responsibility of any employer engaged in any of the enterprises or businesses enumerated in section three (3) of this Act, or of any employer who is not engaged in any such enterprises or businesses, but who has elected to provide and pay

compensation for accidental injuries sustained by any employee arising out of and in the course of the employment according to the provision of this Act, and whose election to continue under this Act, has not been nullified by any action of his employees as provided for in this Act. [Amended by Act approved June 25, 1917.

§ 12. INJURED EMPLOYEE MUST SUBMIT TO EXAMINATIONS.] An employee entitled to receive disability payments shall be required, if requested by the employer, to submit himself, at the expense of the employer, for examination to a duly qualified medical practitioner or surgeon selected by the employer, at a time and place reasonably convenient for the employee, as soon as practicable after the injury, and also one week after the first examination and thereafter at intervals not oftener than once every four weeks, which examination shall be for the purpose of determining the nature, extent and probable duration of the injury received by the employee, and for the purpose of ascertaining the amount of compensation which may be due the employee from time to time for disability according to the provisions of this Act: *Provided, however*, that such examination shall be made in the presence of a duly qualified medical practitioner or surgeon provided and paid for by the employee, if such employee so desires. In all cases where the examination is made by a surgeon engaged by the employer and the injured employee has no surgeon present at such examination, it shall be the duty of the surgeon making the examination at the instance of the employer to deliver to the injured employee, upon his request or that of his representative a statement in writing of the condition and extent of the injury to the same extent that said surgeon reports to the employer. If the employee refuses so to submit himself to examination or unnecessarily obstructs the same, his right to compensation payments shall be temporarily suspended until such examination shall have taken place, and no compensation shall be payable under this Act for such period. It shall be the duty of surgeons treating an injured employee who is likely to die and treating him at the instance of the employer to have called in another surgeon, to be designated and paid for by either the injured employee or by the person or persons who would become his beneficiary or beneficiaries, to make an examination before the death of such injured employee. [As amended by an Act approved June 28, 1915; in force July 1, 1915.

§ 13a. INDUSTRIAL BOARD CREATED — APPOINTMENT — TERM OF OFFICE.] There is hereby created a board which shall be known

as the Industrial Board to consist of five members to be appointed by the Governor, by and with the consent of the Senate, two of whom shall be representative citizens of the employing class operating under this Act, and two of whom shall be representative citizens of the class of employees operating under this Act, and one of whom shall be a representative citizen not identified with either the employing or employee classes and who shall be designated by the Governor as chairman. Appointment of members to places on the first board or to fill vacancies on said board may be made during recesses of the Senate, but shall be subject to confirmation by the Senate at the next ensuing session of the Legislature.

(b) When there shall become effective the Act known as "The Civil Administrative Code of Illinois," being an Act entitled "An Act in relation to the civil administration of the State Government," there shall thereupon be vested in the Industrial Commission and the industrial officers thereof by said Act created, all of the powers and duties vested in the Industrial Board by the Workmen's Compensation Act, and thereupon wherever in the Workmen's Compensation Act reference, shall be made to the Industrial Board, the board or to any member thereof, it shall be construed as referring and shall apply to the said Industrial Commission, the said Commission, and any industrial officer thereof, respectively. [Amended by Act approved June 25, 1917.

§ 14. SALARY — SECRETARY — CLERKS — SEAL.] The salary of each of the members of the Commission appointed by the Governor shall be Five thousand dollars ($5,000.00) per year. The Commission shall appoint a secretary and shall employ such assistants and clerical help as may be necessary.

The salary of the arbitrators designated by the Commission shall be at the rate of Three thousand dollars ($3,000.00) per year.

The members of the Commission and the arbitrators shall have reimbursed to them their actual traveling expenses and disbursements made or incurred by them in the discharge of their official duties while away from their places of residence in the performance of their duties. The Commission shall provide itself with a seal for the authentication of its orders, awards, and proceedings, upon which shall be inscribed the name of the Commission and the words "Illinois—Seal." [Amended by Act approved June 28, 1919.

§ 15. JURISDICTION — DUTIES.] The Industrial Board shall have jurisdiction over the operation and administration of this

Act, and said board shall perform all the duties imposed upon it by this Act, and such further duties as may hereafter be imposed by law and the rules of the board not inconsistent therewith.

§ 16. RULES AND ORDERS—PROCEDURE—POWERS.] The board may make rules and orders for carrying out the duties imposed upon it by law, which rules and orders shall be deemed *prima facie* reasonable and valid; and the process and procedure before the board shall be as simple and summary as reasonably may be. The board upon application of either party may issue *dedimus potestatem* directed to a commissioner, notary public, justice of the peace or any other officer authorized by law to administer oaths, to take the depositions of such witness or witnesses as may be necessary in the judgment of such applicant. Such *dedimus potestatem* may issue to any of the officers aforesaid in any state or territory of the United States or in any foreign country. The board shall have the power to adopt necessary rules to govern the issue of such *dedimus potestatem*. The board, or any member thereof, or any arbitrator designated by said board shall have the power to administer oaths, subpoena and examine witnesses, to issue subpoenas *duces tecum*, requiring the production of such books, papers, records and documents as may be evidence of any matter under inquiry, and to examine and inspect the same and such places or premises as may relate to the question in dispute. Said board, or any member thereof, or any arbitrator designated by said board, shall on written request of either party to the dispute, issue subpoenas for the attendance of such witnesses and production of such books, papers, records and documents as shall be designated in said applications, *providing, however,* that the parties applying for such subpoena shall advance the officer and witness fees provided for in suits pending in the circuit court. Service of such subpoenas shall be made by any sheriff or constable or other person. In case any person refuses to comply with an order of the board or subpoena issued by it or any member thereof, or any arbitrator designated by said board or to permit an inspection of places or premises, or to produce any books, papers, records, or documents, or any witness refuses to testify to any matters regarding which he may be lawfully interrogated, the county court of the county in which said hearing or matter is pending, on application of any member of the board or any arbitrator designated by the board, shall compel obedience by attachment proceedings, as for contempt, as in a case of disobedience of the requirements of a subpoena from such court on a refusal to testify therein.

The board at its expense shall provide a stenographer to take the testimony and record of proceedings at the hearings before an arbitrator, committee of arbitration, or the board, and said stenographer shall furnish a transcript of such testimony or proceedings to any person requesting it upon payment to him therefor of five cents per one hundred words for the original and three cents per one hundred words for each copy of such transcript.

The board shall have the power to determine the reasonableness and fix the amount of any fee or compensation charged by any person for any service performed in connection with this Act, or for which payment is to be made under this Act, or rendered in securing any right under this Act. [Amended by Act approved May 31, 1917.

§ 17. BLANK FORMS—BOOKS AND RECORDS.] The board shall cause to be printed and furnished free of charge upon request by any employer or employee such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this Act, and the performance of the duties of the board; it shall provide a proper record in which shall be entered and indexed the name of any employer who shall file a notice of declination or withdrawal under this Act, and the date of the filing thereof; and a proper record in which shall be entered and indexed the name of any employee who shall file such a notice of declination or withdrawal, and the date of the filing thereof; and such other notices as may be required by the terms and intendment of this Act; and records in which shall be recorded all proceedings, orders and awards had or made by the board, or by the arbitration committees, and such other books or records as it shall deem necessary, all such records to be kept in the office of the board.

§ 18. QUESTIONS DETERMINED BY INDUSTRIAL BOARD.] All questions arising under this Act, if not settled by agreement of the parties interested therein, shall, except as otherwise provided, be determined by the Industrial Board.

§ 19. DISPUTED QUESTIONS OF LAW OR FACT—COMMITTEE OF ARBITRATION—DECISION—PETITION FOR REVIEW—PHYSICIAN—DECISION OF INDUSTRIAL BOARD—REVIEW BY SUPREME COURT—CIRCUIT COURT TO RENDER JUDGMENT—REVIEW AFTER AWARD—ADDRESS TO BE FILED—NOTICE.] Any disputed question of law or fact shall be determined as herein provided.

(a) It shall be the duty of the Industrial Commission upon notification that the parties have failed to reach an agreement, to designate an arbitrator: *Provided,* that if the compensation claimed is for a partial permanent or total permanent inca-

pacity or for death, then the dispute may, at the election of either party, be determined by a committee of arbitration, which election for determination by a committee shall be made by petitioner filing with the Commission his election in writing with his petition or by the other party filing with the Commission his election in writing within five days of notice to him of the filing of the petition, and thereupon it shall be the duty of the Industrial Commission, upon either of the parties having filed their election for a committee of arbitration as above provided, to notify both parties to appoint their respective representatives on the committee of arbitration. The Commission shall designate an arbitrator to act as chairman, and if either party fails to appoint its member on the committee within seven days after notification as above provided, the Commission shall appoint a person to fill the vacancy and notify the parties to that effect. The party filing his election for a committee of arbitration shall with his election deposit with the Commission the sum of twenty dollars, to be paid by the Commission to the arbitrators selected by the parties as compensation for their services as arbitrators, and upon a failure to deposit as aforesaid, the election shall be void and the determination shall be by an arbitrator designated by the Commission. The members of the committee of arbitration appointed by either of the parties or one appointed by the Commission to fill a vacancy by reason of the failure of one of the parties to appoint, shall not be a member of the Commission or an employee thereof.

(b) The arbitrator or committee of arbitration shall make such inquiries and investigations as he or they shall deem necessary, and may examine and inspect all books, papers, records, places, or premises relating to the questions in dispute, and hear such proper evidence as the parties may submit. The hearings before the arbitrator or committee of arbitration shall be held in the vicinity where the injury occurred, after ten days' notice of the time and place of such hearing shall have been given to each of the parties or their attorneys of record. The decision of the arbitrator or committee of arbitration shall be filed with the Industrial Commission, which Commission shall immediately send to each party or his attorney a copy of such decision, together with a notification of the time when it was filed, and unless a petition for a review is filed by either party within fifteen days after the receipt by said party of the copy of said decision and notification of time when filed, and unless such party petitioning for a review shall within twenty days after the receipt by him of the copy of said decision, file with the

Commission either an agreed statement of the facts appearing upon the hearing before the arbitrator or committee of arbitration, or if such party shall so elect, a correct stenographic report of the proceedings at such hearings, then the decision shall become the decision of the Industrial Commission and in the absence of fraud shall be conclusive: *Provided,* that such Industrial Commission may for sufficient cause shown grant further time, not exceeding thirty days, in which to petition for such review or to file such agreed statement or stenographic report. Such agreed statement of facts or correct stenographic report, as the case may be, shall be authenticated by the signatures of the parties or their attorneys and in the event they do not agree as to the correctness of the stenographic report it shall be authenticated by the signature of the arbitrator designated by the Commission.

(c) The Industrial Commission may appoint, at its own expense, a duly qualified, impartial physician to examine the injured employee and report to the Commission. The fee for this service shall not exceed five dollars and traveling expenses, but the Commission may allow additional reasonable amounts in extraordinary cases. The fees and the payment thereof of all attorneys and physicians for services authorized by the Commission under this Act shall, upon request of either the employer or the employee or the beneficiary affected, be subject to the review and decision of the Industrial Commission.

(d) If any employee shall persist in insanitary or injurious practices which tend to either imperil or retard his recovery or shall refuse to submit to such medical or surgical treatment as is reasonably essential to promote his recovery, the Commission may, in its discretion, reduce or suspend the compensation of any such injured employee.

(e) If a petition for review and agreed statement of facts or stenographic report is filed, as provided herein, the Industrial Commission shall promptly review the decision of the arbitrator or committee of arbitration and all questions of law or fact which appear from the said statement of facts or stenographic report, and such additional evidence as the parties may submit. After such hearing upon review, the Commission shall file in its office its decision thereon, and shall immediately send to each party or his attorney a copy of such decision and a notification of the time when it was filed.

Such review and hearing may be held in its office or elsewhere as the Commission may deem advisable: *Provided,* that the taking of testimony on such hearing may be had before any

member of the Commission and in the event either of the parties may desire an argument before others of the Commission such argument may be had upon written demand therefor filed with the Commission within five days after the commencement of such taking of testimony, in which event such argument shall be had before not less than a majority of the Commission: *Provided*, that the Commission shall give ten days' notice to the parties or their attorneys of the time and place of such taking of testimony and of such argument.

In any case the Commission in its decision may in its discretion find specially upon any question or questions of law or fact which shall be submitted in writing by either party, whether ultimate or otherwise. Any party may, within twenty days after receipt of notice of the Commission's decision, or within such further time, not exceeding thirty days, as the Commission may grant, file with the Commission either an agreed statement of the facts appearing upon the hearing, or, if such party shall so elect a correct stenographic report of the additional proceedings presented before the Commission, in which report the party may embody a correct statement of such other proceedings in the case as such party may desire to have reviewed, such statement of facts or stenographic report to be authenticated by the signature of the parties or their attorneys, and in the event that they do not agree, then the authentication of such stenographic report shall be by the signature of any member of the Commission. The applications for adjustment of claim and other documents in the nature of pleadings filed by either party, together with the decisions of the arbitrator and of the Industrial Commission and the statement of facts or stenographic reports hereinbefore provided for in paragraphs (b) and (c) shall be the record of the proceedings of said Commission, and shall be subject to review as hereinafter provided.

(f) The decision of the Industrial Commission, acting within its powers, according to the provisions of paragraph (e) of this section shall, in the absence of fraud, be conclusive, unless reviewed as in this paragraph hereinafter provided.

(1) The Circuit Court of the county where any of the parties defendant may be found shall by writ of *certiorari* to the Industrial Commission have power to review all questions of law presented by such record, except such as arise in a proceeding in which under paragraph (b) of this section a decision of the arbitrator or committee of arbitration has become the decision of the Industrial Commission. Such writ shall be issued by the clerk of such court upon *praecipe*. Service upon any member

of the Industrial Commission or the secretary thereof shall be service on the Commission and service upon other parties interested shall be by *scire facias*, or service may be made upon said Commission and other parties in interest by mailing notice of the commencement of the proceedings and the return day of the writ to the office of said Commission and the last known place of residence of the other parties in interest at least ten days before the return day of said writ. Such suit by writ of *certiorari* shall be commenced within twenty days of the receipt of notice of the decision of the Commission.

The Industrial Commission shall not be required to certify the record of their proceedings to the Circuit Court, unless the party commencing the proceedings for review in the Circuit Court, as above provided, shall pay to the Commission the sum of five cents per one hundred words of testimony taken before said Commission and three cents per one hundred words of all other matters contained in such record.

(2) No such writ of *certiorari* shall issue unless the one against whom the Industrial Commission shall have rendered an award for the payment of money shall upon the filing of his *praecipe* for such writ filed with the clerk of said court a bond conditioned that if he shall not successfully prosecute said writ, he will pay the said award, and the costs of the proceedings in said court. The amount of the bond shall be fixed by any member of the Industrial Commission and the surety or sureties on said bond shall be approved by the clerk of said court.

The court may confirm or set aside the decision of the Industrial Commission. If the decision is set aside and the facts found in the proceedings before the Commission are sufficient, the court may enter such decision as is justified by law, or may remand the cause to the Industrial Commission for further proceedings, and may state the questions requiring further hearing, and give such other instructions as may be proper.

Judgments and orders of the Circuit Court under this Act shall be reviewed only by the Supreme Court upon a writ of error which the Supreme Court in its discretion may order to issue, if applied for not later than the second day of the first term of the Supreme Court following the rendition of the Circuit Court judgment or order sought to be reviewed, provided that if the first day of said term is less than thirty days from the rendition of said judgment or order, then application for said writ of error may be made not later than the second day of the second term following the rendition of said judgment or order.

The writ of error when issued shall operate as a *supersedeas*.

The bond filed with the *praecipe* for the writ of *certiorari* as provided in this paragraph shall operate as a stay of the judgment or order of the Circuit Court until the time shall have passed within which an application for a writ of error can be made, and until the Supreme Court has acted upon the application for a writ of error, if such application is made.

The decision of a majority of the members of a committee of arbitration or of the Industrial Commission shall be considered the decision of such committee or Commission, respectively.

(g) Either party may present a certified copy of the decision of the Industrial Commission, when no proceedings for review thereof have been taken, or of the decision of such arbitrator or committee of arbitration when no claim for review is made, or of the decision of the Industrial Commission after hearing upon review, providing for the payment of compensation according to this Act, to the Circuit Court of the county in which such accident occurred or either of the parties are residents, whereupon said court shall render a judgment in accordance therewith; and in case where the employer does not institute proceedings for review of the decision of the Industrial Commission and refuses to pay compensation according to the award upon which such judgment is entered, the court shall, in entering judgment thereon, tax as costs against him the reasonable costs and attorney fees in the arbitration proceedings and in the court entering the judgment, for the person in whose favor the judgment is entered, which judgment and costs, taxed as herein provided shall, until and unless set aside, have the same effect as though duly rendered in an action duly tried and determined by said court, and shall, with like effect, be entered and docketed. The Circuit Court shall have power, at any time, upon application, to make any such judgment conform to any modification required by any subsequent decision of the Supreme Court upon appeal, or as the result of any subsequent proceedings for review, as provided in this Act.

Judgment shall not be entered until fifteen days' notice of the time and place of the application for the entry of judgment shall be served upon the employer by filing such notice with the Industrial Commission which Commission shall, in case it has on file the address of the employer or the name and address of its agent, upon whom notices may be served, immediately send a copy of the notice to the employer or such designated agent; and no judgment shall be entered in the event the employer shall file with the said Commission its bond, with good and sufficient

surety in double the amount of the award, conditioned upon the payment of said award in the event the said employer shall fail to prosecute with effect proceedings for review of the decision or the said decision, upon review, shall be affirmed.

(h) An agreement or award under this Act, providing for compensation in installments, may at any time within eighteen months after such agreement or award be reviewed by the Industrial Commission at the request of either the employer or the employee, on the ground that the disability of the employee has subsequently recurred, increased, diminished or ended; and on such review, compensation payments may be re-established, increased, diminished or ended: *Provided,* that the Commission shall give fifteen days' notice to the parties of the hearing for review: *And, provided, further,* any employee, upon any petition for such review being filed by the employer, shall be entitled to one day's notice for each one hundred miles necessary to be traveled by him in attending the hearing of the Commission upon said petition and three days in addition thereto, and such employee, shall, at the discretion of the Commission, also be entitled to five cents per mile, necessarily traveled by him in attending such hearing not to exceed a distance of 300 miles, to be taxed by the Commission as costs and deposited with the petition of the employer.

(i) Each party, upon taking any proceedings or steps whatsoever before any arbitrator, committee of arbitration, Industrial Commission or court, shall file with the Industrial Commission his address, or the name and address of an agent upon whom all notices to be given to such party shall be served, either personally or by registered mail addressed to such party or agent at the last address so filed with the Industrial Commission: *Provided,* that in the event such party has not filed his address, or the name and address of an agent, as above provided, service or any notice may be had by filing such notice with the Industrial Commission.

(j) Whenever in any proceeding testimony has been taken or a final decision has been rendered, and after the taking of such testimony, or after such decision has become final, the injured employee dies, then in any subsequent proceeding brought by the personal representative or beneficiaries of the deceased employee, such testimony in the former proceeding may be introduced with the same force and effect as though the witness having so testified were present in person in such subsequent proceeding and such final decision, if any shall be taken

as a final adjudication of any of the issues which are the same in both proceedings.

(k) In any case where there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation, or proceedings have been instituted or carried on by the one liable to pay the compensation, which do not present a real controversy, but are merely frivolous or for delay, then the Commission may award compensation additional to that otherwise payable under this Act equal to fifty percentum of the amount payable at the time of such award. [Amended by Act approved June 28, 1919.

§ 20. INDUSTRIAL BOARD TO REPORT TO GOVERNOR.] The Industrial Board shall report in writing to the Governor on the 30th day of June, annually, the details and results of its administration of this Act, in accordance with the terms of this Act, and may prepare and issue such special bulletins and reports from time to time as in the opinion of the board, seems advisable.

§ 21. AWARD NOT SUBJECT TO LIEN—LIEN WHERE EMPLOYER INSOLVENT—DEATH.] No payment, claim, award or decision under this Act shall be assignable or subject to any lien, attachment or garnishment, or be held liable in any way for any lien, debt, penalty or damages. A decision or award of the Industrial Commission against an employer for compensation under this Act, or a written agreement by an employer to pay such compensation shall, upon the filing of a certified copy of the decision or said agreement, as the case may be, with the Recorder of Deeds of the County, constitute a lien upon all property of the employer within said county, paramount to all other claims or liens, except mortgages, trust deeds, or for wages or taxes, and such liens may be enforced in the manner provided for the foreclosure of mortgages under the laws of this State. Any right to receive compensation hereunder shall be extinguished by the death of the person or persons entitled thereto, subject to the provisions of this Act relative to compensation for death received in the course of employment: *Provided,* that upon the death of a beneficiary, who is receiving compensation provided for in section 7, leaving surviving a parent, sister or brother of the deceased employee, at the time of his death dependent upon him for support, who were receiving from such beneficiary a contribution to support, then that proportion of the compensation of the beneficiary which would have been paid but for the death of the beneficiary, but in no event exceeding said unpaid compensation, which the contribution of the beneficiary to the dependent's support within one year prior to the

death of the beneficiary bears to the compensation of the beneficiary within that year, shall be continued for the benefit of such dependents, notwithstanding the death of the beneficiary. [Amended by Act approved June 28, 1919.

§ 22. CONTRACT WITHIN SEVEN DAYS AFTER INJURY PRESUMED FRAUDULENT.] Any contract or agreement made by any employer or his agent or attorney with any employee or any other beneficiary of any claim under the provisions of this Act within seven days after the injury shall be presumed to be fraudulent.

§ 23. WAIVER OF PROVISIONS MUST BE APPROVED BY INDUSTRIAL BOARD.] No employee, personal representative, or beneficiary shall have power to waive any of the provisions of this Act in regard to the amount of compensation which may be payable to such employee, personal representative or beneficiary hereunder except after approval by the Industrial Board.

§ 24. NOTICE OF ACCIDENT.] No proceedings for compensation under this Act shall be maintained unless notice of the accident has been given to the employer as soon as practicable, but not later than 30 days after the accident. In cases of mental incapacity of the employee, notice must be given within six months after such accident. No defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings by arbitration or otherwise by the employee, unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy. Notice of the accident shall state the name and address of the employee injured, the approximate date and place of the accident, if known, and in simple language the cause thereof; which notice may be served personally or by registered mail, addressed to the employer at his last known residence or place of business: *Provided,* that the failure on the part of any person entitled to such compensation to give such notice shall not relieve the employer from his liability for such compensation, when the facts and circumstances of such accident are known to such employer, his agent or vice principal in the enterprise. No proceedings for compensation under this Act shall be maintained unless claim for compensation has been made within six months after the accident, or in the event that payments have been made under the provisions of this Act unless written claim for compensation has been made within six months after such payments have ceased and a receipt therefor or a statement of the amount of compensation paid shall have been filed with the Commission: *Provided,* that no employee who after the accident returns to the employment of the employer in whose services he was injured shall be barred for fail-

ure to make such claim if an application for adjustment of such claim is filed with the Industrial Commission within eighteen months after he returns to such employment and the said Commission shall give notice to the employer of the filing of such application in the manner provided in this Act. [Amended by Act approved June 28, 1919.

§ 25. HOW EMPLOYER MAY BE RELIEVED OF LIABILITY FOR COMPENSATION.] Any employer against whom liability may exist for compensation under this Act, may, with the approval of the Industrial Board, be relieved therefrom by:

(a) Depositing the commuted value of the total unpaid compensation for which such liability exists, computed at three per centum per annum in the same manner as provided in section 9, with the State Treasurer, or county treasurer in the county where the accident happened, or with any State or National bank or trust company doing business in this State, or in some other suitable depository approved by the Industrial Board: *Provided,* that any such depository to which such compensation may be paid shall pay the same out in installments as in this Act provided, unless such sum is ordered paid in, and is commuted to, a lump sum payment in accordance with the provisions of this Act.

(b) By the purchase of an annuity, in an amount of compensation due or computed, under this Act within the limitation provided by law, in any insurance company granting annuities and licensed or permitted to do business in this State, which may be designated by the employer, or the Industrial Board.

§ 26. PROVISION TO BE MADE BY EMPLOYER ELECTING TO PAY COMPENSATION—APPROVAL OF INDUSTRIAL BOARD—WHEN PROVISION NOT MADE OR APPROVED—INSURANCE LIABILITY—FAILURE TO COMPLY.] (a) Any employer who shall come within the provisions of section 3 of this Act, and any other employer who shall elect to provide and pay the compensation provided for in this Act shall:

(1) File with the Commission a sworn statement showing his financial ability to pay the compensation provided for in this Act, or

(2) Furnish security, indemnity or a bond guaranteeing the payment by the employer of the compensation provided for in this Act, or

(3) Insure to a reasonable amount his liability to pay such compensation in some corporation or organization authorized,

licensed or permitted to do such insurance business in this State, or

(4) Make some other provisions for the securing of the payment of compensation provided for in this Act, and

(5) Upon becoming subject to this Act and thereafter as often as the Commission may in writing demand, file with the Commission in form prescribed by it evidence of his compliance with the provisions of this paragraph.

(b) The sworn statement of financial ability, or security, indemnity or bond, or amount of insurance, or other provisions, filed, furnished, carried, or made by the employer, as the case may be, shall be subject to the approval of the Commission, upon the approval of which, the Commission shall send to the employer written notice of its approval thereof. The filing with the Commission of evidence of compliance with paragraph (a) of this section as therein provided shall constitute such compliance until ten days after written notice to the employer of the disapproval by the Commission.

(c) Whenever the Industrial Commission shall find that any corporation, company, association, aggregation of individuals, or other insurer affecting workmen's compensation insurance in this State shall be insolvent, financially unsound, or unable to fully meet all payments and liabilities assumed or to be assumed for compensation insurance in this State, or shall practice a policy of delay or unfairness toward employees in the adjustment, settlement, or payment of benefits due such employees, the said Industrial Commission may after reasonable notice and hearing order and direct that such corporation, company, association, aggregation of individuals, or insurer, shall from and after a date fixed in such order discontinue the writing of any such workmen's compensation insurance in this State. Subject to such modification of said order as the Commission may later make on review of said order, as herein provided, it shall thereupon be unlawful for any such corporation, company, association, aggregation of individuals, or insurer to effect any workmen's compensation insurance in this State. Any such order made by said Industrial Commission shall be subject to review by the courts, as in the case of other orders of said Industrial Commission, provided that upon said review the Circuit Court shall have power to review all questions of fact as well as of law.

(d) The failure or neglect of an employer to comply with the provisions of paragraph (a) of this section shall be deemed a misdemeanor punishable by a fine equal to ten cents per each employee of such employer, at the time of such failure or neglect,

but not less than one dollar nor more than fifty dollars, for each day of such refusal or neglect until the same ceases. Each day of such refusal or neglect shall constitute a separate offense. [Amended by Act approved June 28, 1919.

§ 27. NOT AFFECT CONTINUANCE OF ANY EXISTING INSURANCE, ETC.—NOT PREVENT EMPLOYER FROM INSURING—EMPLOYEE MAY INSURE FOR ADDITIONAL BENEFITS.] (a) This Act shall not affect or disturb the continuance of any existing insurance, mutual aid, benefit or relief association or department, whether maintained in whole or in part by the employer or whether maintained by the employees, the payment of benefits of such association or department being guaranteed by the employer or by some person, firm or corporation for him: *Provided*, the employer contributes to such association or department an amount not less than the full compensation herein provided, exclusive of the cost of the maintenance of such association or department and without any expense to the employee. This Act shall not prevent the organization and maintaining under the insurance laws of this State of any benefit or insurance company for the purpose of insuring against the compensation provided for in this Act, the expense of which is maintained by the employer. This Act shall not prevent the organization or maintaining under the insurance laws of this State of any voluntary mutual aid, benefit or relief association among employees for the payment of additional accident or sick benefits.

(b) No existing insurance, mutual aid, benefit or relief association or department shall, by reason of anything herein contained be authorized to discontinue its operation without first discharging its obligations to any and all persons carrying insurance in the same or entitled to relief or benefits therein.

(c) Any contract, oral, written or implied, of employment providing for relief benefit, or insurance or any other device whereby the employee is required to pay any premium or premiums for insurance against the compensation provided for in this Act shall be null and void, and any employer withholding from the wages of any employee any amount for the purpose of paying any such premium shall be guilty of a misdemeanor and punishable by a fine of not less than ten dollars nor more than one thousand dollars, or imprisonment in the county jail for not more than six months, or both, in the discretion of the court.

§ 28. IN CASE OF EMPLOYER'S INSOLVENCY SUBROGATED TO HIS RIGHTS AGAINST ANY INSURANCE COMPANY.] In the event the employer does not pay the compensation for which he is liable,

then an insurance company, association or insurer which may have insured such employer against such liability shall become primarily liable to pay to the employee, his personal representative or beneficiary the compensation required by the provisions of this Act to be paid by such employer. The insurance carrier may be made a party to the proceedings to which the employer is a party and an award may be entered jointly against the employer and the insurance carrier. [Amended by Act approved June 28, 1919.

§ 29. WHERE INJURY CAUSED UNDER CIRCUMSTANCES CREATING A LEGAL LIABILITY IN SOME PERSON OTHER THAN THE EMPLOYER.] Where an injury or death for which compensation is payable by the employer under this Act, was not proximately caused by the negligence of the employer or his employees, and was caused under circumstances creating a legal liability for damages in some person other than the employer to pay damages, such other person having also elected to be bound by this Act, or being bound thereby under section three (3) of this Act, then the right of the employee or personal representative to recover against such other person shall be subrogated to his employer and such employer may bring legal proceedings against such other person to recover the damages sustained in an amount not exceeding the aggregate amount of compensation payable under this Act, by reason of the injury or death of such employee. Where the injury or death for which compensation is payable under this Act, was not proximately caused by the negligence of the employer or his employees and was caused under circumstances creating a legal liability for damages on the part of some person other than the employer to pay damages, such other person having elected not to be bound by this Act, then legal proceedings may be taken against such other person. to recover damages notwithstanding such employer's payment of or liability to pay compensation under this Act, but in such case if the action against such other person is brought by the injured employee or his personal representative and judgment is obtained and paid, or settlement is made with such other person, either with or without suit, then from the amount received by such employee or personal representative there shall be paid to the employer the amount of compensation paid or to be paid by him to such employee or his personal representative: *Provided*, that if the injured employee or his personal representative shall agree to receive compensation from the employer or to institute proceedings to recover the same or accept from the employer any payment on account of such com-

pensation, such employer shall be subrogated to all the rights of such employee or personal representative and may maintain, or in case an action has already been instituted, may continue an action either in the name of the employee or personal representative or in his own name against such other person for the recovery of damages to which but for this section the said employee or personal representative would be entitled, but such employer shall nevertheless pay over to the injured employee or personal representative, all sums collected from such other person by judgment or otherwise in excess of the amount of such compensation paid or to be paid under this Act, and all costs, attorneys' fees and reasonable expenses incurred by such employer in making such collection and enforcing such liability. [Amended by Act approved June 25, 1917.

§ 30. REPORT OF ACCIDENT, ETC., BY EMPLOYER TO INDUSTRIAL BOARD.] It shall be the duty of every employer within the provisions of this Act to send to the Industrial Board in writing an immediate report of all accidental injuries arising out of or in the course of the employment and resulting in death; it shall also be the duty of every such employer to report between the 15th and 25th of each month to the Industrial Board all accidental injuries for which compensation has been paid under this Act, which injuries entail a loss to the employee of more than one week's time, and in case the injury results in permanent disability, a further report shall be made as soon as it is determined that such permanent disability has resulted or will result from such injury. All reports shall state the date of the injury, including the time of day or night, the nature of the employer's business, the name, address, the age, sex, conjugal condition of the injured person, the specific occupation of the injured person, the direct cause of the injury and the nature of the accident, the character of the injury, the length of disability, and, in case of death, the length of disability before death, the wages of the injured person, whether compensation has been paid to the injured person, or to his legal representatives or his heirs or next of kin, the amount of compensation paid, the amount paid for physicians', surgeons' and hospital bills, and by whom paid, the amount paid for funeral or burial expenses, if known. The making of reports as provided herein shall release the employer covered by the provisions of this Act from making such reports to any other officer of the State.

§ 31. WHO INCLUDED IN TERM "EMPLOYER"—CONTRACTING WITH OTHERS TO DO THE WORK.] Any one engaging in any business or enterprise referred to in sub-sections 1 and 2 of section 3

of this Act who undertakes to do any work enumerated therein, shall be liable to pay compensation to his own immediate employees in accordance with the provisions of this Act, and in addition thereto if he directly or indirectly engages any contractor whether principal or sub-contractor to do any such work, he shall be liable to pay compensation to the employees of any such contractor or sub-contractor unless such contractor or sub-contractor shall have insured, in any company or association authorized under the laws of this State to insure the liability to pay compensation under this Act, or guaranteed his liability to pay such compensation.

In the event any such person shall pay compensation under this section he may recover the amount thereof from the contractor or sub-contractor, if any, and in the event the contractor shall pay compensation under this section he may recover the amount thereof from the sub-contractor, if any.

This section shall not apply in any case where the accident occurs elsewhere than on, in or about the immediate premises on which the principal has contracted that the work shall be done. [Amended by Act approved June 28, 1919.

§ 32. RIGHT OF ACTION ACCRUING BEFORE TAKING EFFECT OF THIS ACT—IF THIS ACT REPEALED, ETC.—CLAIM UNDER PREVIOUS ACT HOW ADJUSTED.] If any of the provisions of this Act providing for compensation for injuries to or death of employees shall be repealed or adjudged invalid or unconstitutional, the period intervening between the occurrence of any injury or death and such repeal or final adjudication of invalidity, shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death, but the amount of any compensation which may have been paid for any such injury shall be deducted from any judgment for damages recovered on account of such injury. Any claim, disagreement or controversy existing or arising under "An Act to promote the general welfare of the people of this State, by providing compensation for accidental injuries or death suffered in the course of employment," approved June 10, 1911, in force May 1, 1912, shall be adjusted in accordance with the provisions of said Act, notwithstanding the repeal thereof, or may by agreement of the parties be adjusted in accordance with the method of procedure provided in this Act for the adjustment of differences, jurisdiction to adjust such differences so submitted by the parties being hereby conferred upon the Industrial Board or committee of arbitration provided for in this act. [Amended by Act approved June 25, 1917.

§ 33. PENALTIES.] Any wilful neglect, refusal, or failure to do the things required to be done by any section, clause, or provision of this Act, on the part of the persons herein required to do them, or any violation of any of the provisions or requirements hereof, or any attempt to obstruct or interfere with any court officer, or any other person charged with the duty of administering or enforcing the provisions of this Act, shall be deemed a misdemeanor, punishable by a fine of not less than $10.00 nor more than $500.00 at the discretion of the court.

§ 33½. NAME OF ACT.] This Act may be cited as the Workmen's Compensation Act. [Added by an Act approved June 28, 1915.

§ 34. INVALIDITY.] The invalidity of any portion of this Act shall in no way affect the validity of any other portion thereof which can be given effect without such invalid part.

§ 35. REPEAL.] That an Act to promote the general welfare of the State of Illinois by providing compensation for accidental injuries or death suffered in the course of employment, approved June 10, 1911, in force May 1, 1912, be, and the same is, hereby repealed.

CHAPTER XXVIII

RULES OF THE ILLINOIS INDUSTRIAL COMMISSION

GENERAL RULES AND RULES OF PRACTICE OF THE INDUSTRIAL COMMISSION OF ILLINOIS

Revised, Effective January 1, 1920

RULE 1. DOCKETING AND NUMBERING OF CASES. All cases brought before the Industrial Commission shall be docketed and given a number. In filing any papers or calling the attention of the Commission to any case, the number must be given. Applications for arbitration (non-fatal 10, fatal 10-a) shall be filed in duplicate and one copy shall be sent the respondent by the Industrial Commission. No answer or other pleading need be filed by the respondent.

RULE 2. REMOVAL OF PAPERS. No document or file shall be taken from the office of the Industrial Commission without the consent of the Secretary nor by any person other than a party in interest or agent or attorney of record, and then only upon receipt duly given. No papers so taken shall be kept out of the office of the Commission more than three (3) days. In no case shall any original application for arbitration, award on arbitration, petition for review or decision on petition for review, bond, or any document relating to security for the payment of compensation, be taken from the office of the Commission.

RULE 3. NOTICE AND PLACE OF HEARING—ARBITRATION. Hearings upon applications for arbitration which originate in Chicago, shall be held in Chicago. Those which originate outside of Chicage, shall be held in the vicinity where the accident occurred. Ten (10) days' notice of the time and place of hearing shall be given each party.

RULE 4. PRACTICE BEFORE ARBITRATOR—PROOF. Hearing on arbitration shall be limited to the points in controversy and each party shall stipulate as to the facts which are not in dispute. If it should appear that a stipulation is entered into,

through error and that justice might result, the arbitrator may, in his discretion, set such stipulation aside and require the submission of evidence. The burden of proof shall be upon the applicant and he shall have the right to open and close the case.

RULE 5. PHYSICAL EXAMINATION OF INJURED EMPLOYEES. An employee shall not be required to submit to a physical examination by a medical practitioner at the time of any hearing upon a disputed claim, such examination at that time may be had only by agreement of the parties. Where compensation is being paid to an injured employee, the employer shall have the right to have the employee examined by a duly qualified medical practitioner or surgeon upon giving the employee notice of the time and place of such examination, which must be reasonably convenient to the employee, and the employee shall have the right to have his own doctor present at such examination or, upon request, shall be furnished with a copy of the report of the doctor selected by the employer.

RULE 6. SUBMITTING DISPUTED MEDICAL QUESTIONS. Where there is a dispute between the parties as to the nature and extent of the disability and the probable duration thereof, the parties may stipulate for an examination by the Medical Director, or other physician or surgeon selected by the Industrial Commission. The decision of the Medical Director, or physician selected, shall be the basis of any settlement made.

RULE 7. PROOF OF RELATIONSHIP AND DEPENDENCY—PROCEDURE. (a) In arbitration proceedings to recover compensation for fatal injuries to an employee, testimony shall be taken bearing on the relationship of such beneficiaries to and their respective dependency upon said deceased employee at the time of the injury, and a finding shall be made by the arbitrator as to the relationship and respective dependency of said beneficiaries and an order entered for payment of the distributive share of each of the beneficiaries, and the arbitrator may, in his discretion, order a child's distributive share paid to its parent or grandparent for the child's support.

(b) Where no arbitration proceedings are necessary and the employer indicates his or its intention to pay compensation for fatal injuries to employee, the relative dependency of the beneficiaries of the deceased employee and the share of each shall be fixed upon petition filed with the Commission, which petition shall be set for hearing as in rule 10. Such hearings in cases which originate in Chicago shall be before a member of the Commission in Chicago; in cases which originate outside of Chicago, either before a member of the Commission or be-

fore an arbitrator. Testimony shall be taken bearing on the relationship of such beneficiaries to, and their respective dependency upon, said deceased employee at the time of the injury. Such testimony shall be reduced to writing and submitted to the Commission and a finding made as to the relationship and respective dependency of said beneficiaries and an order entered for payment of the distributive share of each of the beneficiaries, and the Commission may, in its discretion, order a child's distributive share paid to its parent or grandparent for the child's support.

RULE 8. BOND FATAL CASES WHERE COMPENSATION IS PAID TO REPRESENTATIVE FOR MINOR CHILD. Whenever a child's distributive share shall be ordered paid to its parent or grandparent, the Commission may, in its discretion, require such parent or grandparent to give a bond, to the People of the State of Illinois with surety to secure the payment of said compensation to the child for its support or benefit. Where payment of the installments in fatal cases is ordered by the Commission to be made to the child, the appointment by a court of competent jurisdiction of a guardian is required in order to discharge the employer from liability.

RULE 9. CONTINUANCES. In cases which originate in Chicago, continuances shall not be allowed except for cause, notwithstanding an agreement of the parties. In cases which originate outside Chicago, continuances may, in the discretion of the arbitrator or Commission, be allowed by agreement of the parties in writing, or for cause at the time of the hearing.

RULE 10. NOTICE AND PLACE OF HEARING—REVIEW. Hearings upon petitions for review which originate in Chicago shall be held in Chicago; those which originate outside of Chicago shall be held at central points to be designated by the Commission. Ten (10) days' notice of the time and place of hearing shall be given to each party.

RULE 11. HEARING ON REVIEW AND ADDITIONAL EVIDENCE NOTICE. The hearing before the Commission on review shall be *de novo*. The case will be considered upon the agreed statement of facts or the authenticated transcript of testimony taken before the arbitrator and such additional evidence as shall be submitted upon review. The additional evidence may, in the discretion of the Commission, be introduced, even though it is evidence which could have been submitted at the hearing before the arbitrator. Parties desiring to introduce such additional testimony shall give the opposite party a notice apprising him

of the substance of the additional testimony not less than five days before the date of the hearing.

RULE 12. EXTENSION OF TIME FOR FILING PETITION FOR REVIEW. No extension of time for filing petition for review shall be granted except for cause.

RULE 13. EXTENSION OF TIME FOR FILING STENOGRAPHIC REPORTS. The time for filing a stenographic report ordered of the Commission within twenty (20) days of the receipt of the copy of arbitrator's award or decision on review, by the party petitioning for review, shall be extended until the report is completed and filed. The time for filing stenographic reports not ordered of the Commission, shall be extended upon written motion filed with the Commission for cause.

RULE 14. DISMISSAL, PETITION FOR REVIEW. No petition for review shall be dismissed upon motion of the party filing same, unless the other side agrees in writing, filed with the Commission, to the dismissal thereof, and such dismissal by agreement must be approved by the Industrial Commission.

RULE 15. PETITION TO SUSPEND FOR FAILURE TO SUBMIT TO PROPER MEDICAL TREATMENT. Petitions to suspend compensation for refusal or failure to submit to proper medical treatment, shall be docketed and set the same as petitions for review (see rule 10) except that where an emergency is alleged in the petition, it may be set immediately and notice of the time and place of hearing thereon, shall be given the injured employee. Such petitions to suspend compensation shall not be acted upon unless compensation is paid up to and including the date of filing said petition.

RULE 16. FIXING ATTORNEYS', DOCTORS', HOSPITAL FEES, ETC. Petitions to fix and to determine the reasonableness of any fee or charge for any service rendered in connection with an accidental injury sustained by an employee, shall be docketed and set the same as petitions for review (see rule 10).

RULE 17. HEARING OF CASES REMANDED FOR FURTHER PROCEEDINGS. Certified copy of remanding orders entered by the Circuit Court shall be filed, docketed and set for hearing the same as petitions for review (see rule 10).

RULE 18. CHARGES FOR TRANSCRIPTS. Stenographic reports of proceedings before the Industrial Commission shall be furnished parties and a charge of five cents per hundred words for original and three cents per hundred words for carbon copies made therefor. Payment shall be made in advance.

RULE 19. CHARGES FOR CERTIFICATIONS. Certified copies of proceedings before the Industrial Commission, shall be furnished

and a charge of five cents per hundred words of testimony and three cents per hundred words of all other matters contained in such record, made therefor. Payment shall be made in advance.

RULE 20. PETITIONS FOR LUMP SUM SETTLEMENT. No order for commutation of future installments to a lump sum will be entered, unless a failure to commute the installments to a lump sum will result in hardship to the injured employee or beneficiaries of the deceased employee.

Petitions for lump sum settlement (Form 28) which originate in Chicago shall be set for hearing at Chicago and notice sent the parties as in Rule 10. Petitions for lump sum settlement which originate outside of Chicago shall be set for hearing the same as petitions for review (see rule 10), or in agreed matters may, in the discretion of the Commission, be determined upon investigation so that it will be understood without the necessity of formal hearing.

The Commission shall of its own motion fix attorneys' fees in all cases in which orders for lump sum settlement are entered.

RULE 21. SETTLEMENT CONTRACTS. Settlement contracts (Form 69) which originate in Chicago, in compromise of some disputed question of law or fact shall be placed on the settlement contract call and set for hearing and at the time set, presented in triplicate to the Commissioner assigned. Settlement contracts which originate outside of Chicago shall be presented in triplicate by mail and shall be investigated or set for hearing the same as petitions for review (see rule 10) in the discretion of the Commission. Settlement contracts providing for the payment of compensation in lump sum shall not be acted upon, the payments must be in installments. After the approval thereof, petition for lump sum settlement (Form 28) may be filed and acted upon under rule 19. The Commission shall of its own motion fix attorneys' fees in all settlement contracts.

RULE 22. SUBPOENAS—ISSUANCE—SERVICE. Blank signed and sealed subpoenas shall be issued upon request.

RULE 23. DEPOSITIONS. When it shall be sought to take the deposition of a witness who cannot be present at the hearing, an application for the issuance of a *dedimus potestatem* or commission to take the depositions shall be made to the Secretary of the Industrial Commission, as provided in Chapter 51 of Hurd's Illinois Revised Statutes, being an Act in regard to evidence and depositions in civil cases. Depositions taken by agreement of the parties may be read in evidence.

RULE 24. REPORTING ACCIDENTS. All accidents causing the

loss of more than one week's time must be reported between the 15th and 25th of the month (Form 45), except fatal accidents, which must be reported immediately.

RULE 25. FILING INTERIM RECEIPTS AND FINAL SETTLEMENT RECEIPTS. Receipts showing the payment of compensation, signed by the injured employee, or personal representative, must be filed each month (Form 43). The final settlement receipt (Form 85), signed by the injured employee, or personal representative, must be filed when the final payment of compensation is made.

RULE 26. AFFIDAVIT SECURITIES—SELF-INSURERS. Every employer desiring to carry his own risk without insurance must file an affidavit (Form 87) and deposit securities if ordered to do so by the Commission.

RULE 27. CERTIFICATE OF INSURANCE. Every insurer, upon issuance of a policy, must immediately file a Certificate of Insurance (Form 49) showing the location and character of the business operations covered, the date effective, the policy number, exclusions, and such other information as may be required.

RULE 28. TERMINATION OF INSURANCE. No insurance policy shall be terminated, either by cancellation or expiration, without ten (10) days' notice being given to the Commission, and the liability of the insurer thereunder shall not cease until the expiration of such ten (10) days.

RULE 29. EXCLUSIONS, INSURANCE. No insurer shall issue a policy excluding any employee, class of employees, or any operation of the employer, without first receiving the approval of the Commission.

RULE 30. COAL MINING COMPANIES' FUND. All coal mining companies carrying their own compensation insurance under the Workmen's Compensation Act shall set aside monthly an amount of money based on tonnage or pay roll as shall from time to time be determined by the Commission, to be known as the "Workmen's Compensation Fund." A report shall be made monthly (Form 84) to the Commission, showing the total output, the amount set aside, the total mine pay roll, the disbursements on account of compensation, the amount expended for medical, surgical and hospital services and the balance on hand. The total amount of the disbursements for any one month shall not exceed the amount deposited to the credit of the fund for the preceding month without specific authority of the Industrial Commission.

RULE 31. DEPOSITING COAL MINING FUND. All Workmen's Compensation Funds must be preserved in one of the following

manners: First, the Workmen's Compensation Fund must be kept in a separate account from the other funds of the company and all withdrawals shall be subject to the signature of the Industrial Commission by its Security Supervisor or, second, Liberty Bonds or other securities in an amount equal to the amount in the Workmen's Compensation Fund must be deposited with the Industrial Commission; or, third, Liberty Bonds or other securities in an amount equal to the amount in the Workmen's Compensation Fund must be deposited with a bank organized and existing by virtue of the laws of the State of Illinois, to be held in escrow with the further agreement that said securities shall not be disposed of or withdrawn without the written consent of the Industrial Commission, by its Secretary Superintendent.

RULE 32. PROSECUTING, FAILURE TO SECURE COMPENSATION. The Industrial Commission shall certify on the first day of each month to the Attorney General a list of all employers who have failed to comply with the provisions of Section 26.

TABLES AND FORMS

TABLE SHOWING

TERRITORIAL OPERATION OF AMERICAN

COMPENSATION LAWS

(Compiled as of June 1, 1920)

ALABAMA: If accident occurs outside State, compensation is payable in lieu of any right under law of other State, if contract of employment was made in Alabama and does not otherwise provide. (Sec. 5b.)

ALASKA: Attempt to bring action in any court outside the Territory works forfeiture of right to compensation under Act. (Sec. 22.) See 252 Fed. 207.

ARIZONA: No provision in law and no decisions.

CALIFORNIA: Commission has jurisdiction over injuries sustained outside of State if employee was resident of State and contract of hire was made within State. (Sec. 58.) (173 Pac. 1112.)

COLORADO: Extraterritorial. (174 Pac. 589.)

CONNECTICUT: Act applies to contracts of service whether contemplating performance within or without State. (Sec. 5388.) (100 Atl. 97.)

DELAWARE: Act does not apply to any accident occurring outside the State. (3193a Sec. 94.)

HAWAII: Act extends to injuries received outside Territory, if employee was hired within Territory. If hired outside Territory, and entitled to compensation under law of State or Territory in which hired, his rights will be enforced to extent they can reasonably be determined in Hawaii (Sec. 43). Jurisdiction of Boards extends to injuries received on vessels operated by residents of Territory. (Sec. 27.)

IDAHO: Act extends to injuries received outside State, if employee hired within State. If hired outside State, and entitled to compensation under law of State in which hired, his rights will be enforced to extent that they can reasonably be determined in Idaho. (Secs. 62, 6.)

ILLINOIS: Not extraterritorial. (287 Ill. 396.)

INDIANA: Act applies to injuries whether sustained within State or in another State or country (Sec. 20). But employment in a mine where shaft or opening is in another state, is subject only to laws of that State. (Chap. 169, Laws 1919.) (117 N. E. 531.)

IOWA: No provision, but see Sec. 2477-M. 29, which indicates that the Act is intended to cover injuries outside State; see also 172 N. W. 191.

KANSAS: No action or proceeding under Act may be brought outside of State; and notice to non-residents of State may be served by publication (Sec. 5930). Apparently Act applies to injuries sustained within State. (Secs. 5900, 5940, 5941.) (See 168 Pac. 905.)

KENTUCKY: Act extends to injuries sustained outside of State by employees hired within State, in absence of express written agreement to contrary. (Sec. 8.)

LOUISIANA: No provision in law and no decision.

MAINE: Contract of hire made within State for performance outside State, presumed to include agreement making compensation under Act exclusive remedy for injuries sustained. (Sec. 25.)

MARYLAND: Act does not apply to workmen employed wholly without the State, except as to mining employees who are injured while working in some part of the mine extending underground into an adjoining State, if the tipple, mouth or principal entrance of such mine situated within State. (Sec. 63 [3, 12].)

MASSACHUSETTS: Not extraterritorial. (215 Mass. 480.)

MICHIGAN: No provision and no decision, but see 166 N. W. 496 (Common Law case).

MINNESOTA: Extraterritorial. (166 N. W. 185; 170 N. W. 218.)

MISSOURI: Act applies to injuries received outside the State, if the contract of employment was made in the State and does not otherwise provide. (Sec. 12b.)

MONTANA: No provision in law and no decisions.

NEBRASKA: No provision in law and no decisions.

NEVADA: Employee hired within State, whose duties are usually confined to State, entitled to compensation for injury received outside State while engaged in employer's business. (Sec. 41.)

NEW HAMPSHIRE: No provision in law and no decisions.

NEW JERSEY: No provision. (But now construed to apply generally to accidents suffered outside State.) (99 Atl. 624.)

NEW MEXICO: No provision in law and no decisions.

NEW YORK: No provision in law, but courts have generally given it extra-territorial effect, especially where employee is a resident of the State or where contract of employment was made in the State. (153 N. Y. Supp. 391; 164 N. Y. Supp. 290, 999; 163 N. Y. Supp. 707; 224 N. Y. 9; 168 App. Div. 368, 463.)

NORTH DAKOTA: Act applies to injuries wheresoever they may occur. (Sec. 10.)

OHIO: Act applies to injuries wheresoever they may occur. (Secs. 1465-68, 1465-90.)

OKLAHOMA: No provision in the law and no decisions.

OREGON: No provision in the law and no decisions.

PENNSYLVANIA: Act does not apply to any accident occurring outside of Commonwealth, irrespective of place where contract of hiring made. (Sec. 1.)

PORTO RICO: No provision in the law and no decisions.

RHODE ISLAND: No provision in the law, but construed to apply to accidents suffered outside State. (98 Atl. 103.)

SOUTH DAKOTA: Act applies to injuries whether sustained within State or in another State or country. (Sec. 9453.)

TENNESSEE: Act applies to accidents sustained outside the State, if contract of employment made in the State and does not otherwise expressly provide. (Sec. 19.)

TEXAS: Act applies to injuries received outside State, if employee hired within State. (Pt. 1, Sec. 19.)

UTAH: Act applies to injuries received outside State if workman was hired in State and rights to compensation under law of another State enforcible in Utah, if of such nature that they can be dealt with by Utah Commission and Courts. (Sec. 3126.)

VERMONT: Injuries sustained outside State covered, if contract of hiring was made within State; if made outside State, compensation may be awarded with reference to law of State in which employee hired. (Secs. 5770-1.) Contracts of hiring within State for performance outside State may include and shall be presumed to include agreement making compensation under Act exclusive remedy for injuries. (Sec. 5774.)

VIRGINIA: Act applies to accidents suffered outside State, if contract of hire was made within State, employers' place of business is in State and employee resides in State, unless contract was for service exclusively outside State. (Sec. 37.)

WASHINGTON: No provision in the law and no decisions.

WEST VIRGINIA: Act does not extend to employees while employed outside State, except where employment necessitates temporary absence from State directly incidental to carrying on industry in State. (Sec. 9.)

WISCONSIN: No provision in the law, but generally held extraterritorial. (170 N. W. 275; 150 N. W. 620; 171 N. W. 935.)

WYOMING: No provision in the law and no decision.

TABLES

PRESENT VALUE TABLES

To find the present value of any sum payable weekly, multiply that sum by the present value of $1 payable for the number of weeks for which such sum is payable.

Example: To find the present value of $7.20 payable at the end of each week for 100 weeks, multiply $7.20 by the present value of $1 payable weekly for 100 weeks (shown in the tables to be $97.1833). $7.20 × 97.1833 = $699.72, present value.

Present value at 3%, compounded annually, of $1.00 per week, payable at the end of each week, for any term from one week up to 8 years

Term— Weeks	0 Years	1 Year and — Weeks	2 Years and — Weeks
1	0.9994	52.1947	101.8989
2	1.9983	53.1645	102.8405
3	2.9966	54.1337	103.7814
4	3.9943	55.1024	104.7219
5	4.9915	56.0705	105.6618
6	5.9881	57.0381	106.6012
7	6.9841	58.0051	107.5401
8	7.9796	58.9716	108.4784
9	8.9745	59.9375	109.4162
10	9.9688	60.9029	110.3534
11	10.9626	61.8677	111.2901
12	11.9558	62.8320	112.2263
13	12.9484	63.7957	113.1620
14	13.9405	64.7589	114.0971
15	14.9320	65.7215	115.0317
16	15.9229	66.6836	115.9658
17	16.9133	67.6451	116.8993
18	17.9031	68.6061	117.8323
19	18.8924	69.5666	118.7648
20	19.8811	70.5265	119.6967
21	20.8692	71.4858	120.6281
22	21.8568	72.4446	121.5590
23	22.8438	73.4029	122.4894
24	23.8303	74.3606	123.4192
25	24.8161	75.3178	124.3485
26	25.8015	76.2744	125.2772
27	26.7862	77.2305	126.2055
28	27.7705	78.1860	127.1332
29	28.7541	79.1410	128.0604
30	29.7372	80.0955	128.9870
31	30.7197	81.0494	129.9132
32	31.7017	82.0028	130.8388
33	32.6831	82.9556	131.7638
34	33.6640	83.9079	132.6884
35	34.6443	84.8596	133.6124
36	35.6240	85.8109	134.5359
37	36.6032	86.7615	135.4589
38	37.5818	87.7116	136.3814
39	38.5599	88.6612	137.3033
40	39.5374	89.6103	138.2247
41	40.5144	90.5588	139.1456
42	41.4908	91.5068	140.0659
43	42.4667	92.4542	140.9858
44	43.4420	93.4011	141.9051
45	44.4167	94.3474	142.8239
46	45.3909	95.2933	143.7421
47	46.3645	96.2385	144.6599
48	47.3376	97.1833	145.5771
49	48.3101	98.1275	146.4938
50	49.2821	99.0711	147.4100
51	50.2536	100.0143	148.3257
52	51.2244	100.9569	149.2408
	1 Year	2 Years	3 Years

Present value at 3%, compounded annually, of $1.00 per week, payable at the end of each week, for any term from one week up to 8 years

Term— Weeks	3 Years and — Weeks	4 Years and — Weeks	5 Years and — Weeks
1	150.1554	197.0064	242.4928
2	151.0695	197.8939	243.3544
3	151.9831	198.7808	244.2155
4	152.8962	199.6673	245.0762
5	153.8087	200.5533	245.9364
6	154.7207	201.4387	246.7960
7	155.6323	202.3237	247.6552
8	156.5432	203.2082	248.5139
9	157.4537	204.0921	249.3721
10	158.3637	204.9756	250.2298
11	159.2731	205.8585	251.0871
12	160.1820	206.7410	251.9438
13	161.0904	207.6229	252.8001
14	161.9983	208.5043	253.6558
15	162.9057	209.3853	254.5111
16	163.8125	210.2657	255.3659
17	164.7189	211.1457	256.2202
18	165.6247	212.0251	257.0741
19	166.5300	212.9041	257.9274
20	167.4348	213.7825	258.7803
21	168.3391	214.6605	259.6326
22	169.2429	215.5379	260.4845
23	170.1461	216.4148	261.3359
24	171.0489	217.2913	262.1868
25	171.9511	218.1672	263.0373
26	172.8528	219.0427	263.8872
27	173.7540	219.9176	264.7367
28	174.6547	220.7921	265.5857
29	175.5549	221.6661	266.4342
30	176.4546	222.5395	267.2822
31	177.3537	223.4125	268.1298
32	178.2524	224.2850	268.9768
33	179.1505	225.1569	269.8234
34	180.0481	226.0284	270.6695
35	180.9452	226.8994	271.5151
36	181.8418	227.7699	272.3603
37	182.7379	228.6399	273.2049
38	183.6335	229.5094	274.0491
39	184.5286	230.3784	274.8928
40	185.4232	231.2469	275.7360
41	186.3172	232.1149	276.5787
42	187.2108	232.9825	277.4210
43	188.1038	233.8495	278.2628
44	188.9964	234.7160	279.1041
45	189.8884	235.5821	279.9449
46	190.7799	236.4476	280.7852
47	191.6709	237.3127	281.6251
48	192.5614	238.1773	282.4645
49	193.4514	239.0414	283.3034
50	194.3409	239.9049	284.1419
51	195.2299	240.7680	284.9798
52	196.1184	241.6307	285.8173
	4 Years	5 Years	6 Years

Present value at 3%, compounded annually, of $1.00 per week, payable at the end of each week, for any term from one week up to 8 years

Term—Weeks	6 Years and — Weeks	7 Years and — Weeks
1	286.6543	329.5296
2	287.4908	330.3417
3	288.3269	331.1534
4	289.1625	331.9647
5	289.9976	332.7755
6	290.8322	333.5858
7	291.6664	334.3957
8	292.5001	335.2051
9	293.3333	336.0140
10	294.1660	336.8225
11	294.9983	337.6305
12	295.8301	338.4381
13	296.6614	339.2452
14	297.4922	340.0518
15	298.3226	340.8580
16	299.1525	341.6637
17	299.9819	342.4690
18	300.8109	343.2738
19	301.6394	344.0782
20	302.4674	344.8821
21	303.2949	345.6855
22	304.1220	346.4885
23	304.9486	347.2911
24	305.7748	348.0931
25	306.6004	348.8947
26	307.4256	349.6959
27	308.2504	350.4966
28	309.0746	351.2969
29	309.8984	352.0967
30	310.7217	352.8960
31	311.5446	353.6949
32	312.3670	354.4933
33	313.1889	355.2913
34	314.0103	356.0888
35	314.8313	356.8859
36	315.6519	357.6825
37	316.4719	358.4787
38	317.2915	359.2744
39	318.1106	360.0697
40	318.9293	360.8645
41	319.7475	361.6589
42	320.5652	362.4528
46	321.3825	363.2462
44	322.1993	364.0392
45	323.0156	364.8318
46	323.8315	365.6239
47	324.6469	366.4156
48	325.4618	367.2068
49	326.2763	367.9975
50	327.0903	368.7878
51	327.9039	369.5777
52	328.7169	370.3671
	7 Years	8 Years

Present value at 3%, compounded annually, of $1.00 semi-monthly, payable at the end of each half month, for any term from one-half month up to eight years.*
(For method of computation, see example given under weekly table, *ante*, p. 569.)

Term— Half-Months	0 Years	1 Year and — Months	2 Years and — Months
½	.9978	24.6020	47.5272
1	1.9962	25.5705	48.4676
1½	2.9925	26.5378	49.4068
2	3.9875	27.5040	50.3450
2½	4.9812	28.4690	51.2821
3	5.9738	29.4329	52.2172
3½	6.9651	30.3956	53.1520
4	7.9552	31.3571	54.0858
4½	8.9441	32.3175	55.0186
5	9.9317	33.2767	55.9502
5½	10.9182	34.2348	56.8807
6	11.9034	35.1917	57.8102
6½	12.8874	36.1475	58.7385
7	13.8702	37.1022	59.6658
7½	14.8517	38.0557	60.5921
8	15.8321	39.0081	61.5172
8½	16.8113	39.9593	62.4413
9	17.7893	40.9094	63.3643
9½	18.7661	41.8584	64.2863
10	19.7417	42.8063	65.2071
10½	20.7161	43.7530	66.1270
11	21.6894	44.6986	67.0457
11½	22.6614	45.6431	67.9635
	23.6323	46.5857	68.8786
	1 Year	2 Years	3 Years

* Note: "Every corporation for pecuniary profit engaged in any enterprise or business within the State of Illinois shall as often as semi-monthly pay to every employee engaged in its business all wages or salaries," etc. (Laws, Ill., 1913, p. 358.)

Present value at 3%, compounded annually, of $1.00 semi-monthly, payable at the end of each half month, for any term from one-half month up to eight years.

Term— Half-Months	3 Years and — Months	4 Years and — Months	5 Years and — Months
½	69.7927	91.4194	112.4242
1	70.7056	92.3060	113.2850
1½	71.6178	93.1915	114.1449
2	72.5288	94.0761	115.0038
2½	73.4388	94.9597	115.8619
3	74.3477	95.8423	116.7190
3½	75.2556	96.7240	117.5752
4	76.1624	97.6047	118.4305
4½	77.0683	98.4844	119.2848
5	77.9731	99.3631	120.1383
5½	78.8769	100.2409	120.9908
6	79.7796	101.1177	121.8425
6½	80.6814	101.9936	122.6932
7	81.5821	102.8685	123.5430
7½	82.4818	103.7424	124.3920
8	83.3806	104.6154	125.2400
8½	84.2783	105.4875	126.0871
9	85.1750	106.3585	126.9334
9½	86.0706	107.2287	127.7787
10	86.9653	108.0979	128.6231
10½	87.8590	108.9661	129.4667
11	88.7517	109.8334	130.3094
11½	89.6434	110.6998	131.1512
	90.5319	111.5625	131.9887
	4 Years	5 Years	6 Years

Present value at 3%, compounded annually, of $1.00 semi-monthly, payable at the end of each half month, for any term from one-half month up to eight years.

Term—Half-Months	6 Years and — Months	7 Years and — Months
½	132.8254	152.6394
1	133.6611	153.4509
1½	134.4961	154.2616
2	135.3301	155.0714
2½	136.1633	155.8805
3	136.9956	156.6887
3½	137.8270	157.4961
4	138.6576	158.3027
4½	139.4873	159.1085
5	140.3162	159.9134
5½	141.1442	160.7176
6	141.9713	161.5210
6½	142.7976	162.3235
7	143.6231	163.1252
7½	144.4477	163.9262
8	145.2714	164.7263
8½	146.0943	165.5257
9	146.9163	166.3242
9½	147.7375	167.1219
10	148.5579	167.9189
10½	149.3774	168.7150
11	150.1961	169.5104
11½	151.0139	170.3050
	151.8271	171.0944
	7 Years	8 Years

(Compound Interest—4% Per Annum)

Weeks	Present Value	Weeks	Present Value	Weeks	Present Value	Weeks	Present Value
0		45	44.2281	90	86.9806	135	128.3060
1	0.9992	6	45.1940	1	87.9142	6	129.2085
2	1.9977	7	46.1592	2	88.8471	7	130.1103
3	2.9955	8	47.1237	3	89.7794	8	131.0115
4	3.9925	9	48.0874	4	90.7109	9	131.9119
5	4.9887	50	49.0504	95	91.6418	140	132.8117
6	5.9842	1	50.0127	6	92.5719	1	133.7108
7	6.9789	2	50.9742	7	93.5014	2	134.6092
8	7.8729	3	51.9350	8	94.4301	3	135.5070
9	8.9661	4	52.8951	9	95.3581	4	136.4041
10	9.9586	55	53.8545	100	96.2855	145	137.3005
1	10.9503	6	54.8131	1	97.2122	6	138.1962
2	11.9413	7	55.7711	2	98.1381	7	139.0913
3	12.9316	8	56.7283	3	99.0633	8	139.9856
4	13.9211	9	57.6847	4	99.9879	9	140.8794
15	14.9098	60	58.6405	105	100.9118	150	141.7724
6	15.8978	1	59.5955	6	101.8349	1	142.6648
7	16.8851	2	60.5499	7	102.7574	2	143.5564
8	17.8716	3	61.5035	8	103.6792	3	144.4474
9	18.8574	4	62.4563	9	104.6002	4	145.3378
20	19.8424	65	63.4085	110	105.5206	155	146.2274
1	20.8267	6	64.3599	1	106.4403	6	147.1164
2	21.8102	7	65.3107	2	107.3593	7	148.0048
3	22.7930	8	66.2607	3	108.2776	8	148.8924
4	23.7751	9	67.2100	4	109.1952	9	149.7794
25	24.7564	70	68.1585	115	110.1122	160	150.6657
6	25.7370	1	69.1064	6	111.0284	1	151.5514
7	26.7168	2	70.0536	7	111.9439	2	152.4363
8	27.6959	3	71.0000	8	112.8588	3	153.3207
9	28.6743	4	71.9457	9	113.7729	4	154.2043
30	29.6519	75	72.8907	120	114.6864	165	155.0873
1	30.6288	6	73.8350	1	115.5992	6	155.9696
2	31.6050	7	74.7786	2	116.5112	7	156.8512
3	32.5804	8	75.7215	3	117.4226	8	157.7322
4	33.5550	9	76.6636	4	118.3334	9	158.6126
35	34.5290	80	77.6051	125	119.2434	170	159.4922
6	35.5022	1	78.5458	6	120.1527	1	160.3712
7	36.4747	2	79.4858	7	121.0614	2	161.2495
8	37.4464	3	80.4252	8	121.9694	3	162.1272
9	38.4174	4	81.3638	9	122.8766	4	163.0042
40	39.3877	85	82.3017	130	123.7832	175	163.8806
1	40.3572	6	83.2389	1	124.6892	6	164.7563
2	41.3261	7	84.1754	2	125.5944	7	165.6313
3	42.2942	8	85.1112	3	126.4989	8	166.5057
4	43.2615	9	86.0462	4	127.4028	9	167.3794

Weeks	Present Value	Weeks	Present Value	Weeks	Present Value	Weeks	Present Value
180	168.2524	225	206.8658	270	244.1905	315	280.2698
1	169.1248	6	207.7090	1	245.0056	6	281.0577
2	169.9966	7	208.5517	2	245.8202	7	281.8450
3	170.8676	8	209.3937	3	246.6341	8	282.6317
4	171.7380	9	210.2351	4	247.4474	9	283.4179
185	172.6078	230	211.0758	275	248.2600	320	284.2034
6	173.4769	1	211.9159	6	249.0721	1	284.9884
7	174.3454	2	212.7554	7	249.8836	2	285.7727
8	175.2132	3	213.5942	8	250.6944	3	286.5565
9	176.0803	4	214.4324	9	251.5047	4	287.3397
190	176.9468	235	215.2700	280	252.3143	325	288.1223
1	177.8126	6	216.1069	1	253.1233	6	288.9043
2	178.6778	7	216.9432	2	253.9317	7	289.6857
3	179.5424	8	217.7789	3	254.7395	8	290.4666
4	180.4063	9	218.6139	4	255.5467	9	291.2468
195	181.2695	240	219.4484	285	256.3533	330	292.0265
6	182.1321	1	220.2821	6	257.1593	1	292.8055
7	182.9940	2	221.1153	7	257.9647	2	293.5840
8	183.8553	3	221.9478	8	258.7694	3	294.3619
9	184.7159	4	222.7797	9	259.5736	4	295.1392
200	185.5758	245	223.6110	290	260.3771	335	295.9160
1	186.4352	6	224.4417	1	261.1801	6	296.6921
2	187.2938	7	225.2717	2	261.9824	7	297.4677
3	188.1519	8	226.1011	3	262.7841	8	298.2426
4	189.0093	9	226.9299	4	263.5853	9	299.0170
205	189.8660	250	227.7580	295	264.3858	340	299.7908
6	190.7221	1	228.5856	6	265.1857	1	300.5641
7	191.5775	2	229.4125	7	265.9850	2	301.3367
8	192.4323	3	230.2387	8	266.7837	3	302.1088
9	193.2865	4	231.0644	9	267.5818	4	302.8802
210	194.1400	255	231.8894	300	268.3793	345	303.6511
1	194.9929	6	232.7139	1	269.1762	6	304.4214
2	195.8451	7	233.5377	2	269.9725	7	305.1912
3	196.6967	8	234.3608	3	270.7682	8	305.9603
4	197.5476	9	235.1834	4	271.5633	9	306.7289
215	198.3980	260	236.0053	305	272.3578	350	307.4969
6	199.2476	1	236.8266	6	273.1516	1	308.2643
7	200.0966	2	237.6473	7	273.9449	2	309.0311
8	200.9450	3	238.4674	8	274.7376	3	309.7974
9	201.7928	4	239.2868	9	275.5297	4	310.5630
220	202.6398	265	240.1056	310	276.3212	355	311.3281
1	203.4863	6	240.9238	1	277.1121	6	312.0926
2	204.3321	7	241.7414	2	277.9024	7	312.8566
3	205.1773	8	242.5584	3	278.6921	8	313.6200
4	206.0219	9	243.3748	4	279.4812	9	314.3827

Weeks	Present Value	Weeks	Present Value	Weeks	Present Value	Weeks	Present Value
360	315.1450	400	345.1669	440	374.2966	480	402.5605
1	315.9066	1	345.9059	1	375.0136	1	403.2562
2	316.6677	2	346.6444	2	375.7301	2	403.9514
3	317.4282	3	347.3823	3	376.4461	3	404.6461
4	318.1881	4	348.1196	4	377.1615	4	405.3403
365	318.9474	405	348.8564	445	377.8764	485	406.0339
6	319.7062	6	349.5926	6	378.5907	6	406.7270
7	320.4644	7	350.3282	7	379.3045	7	407.4196
8	321.2220	8	351.0633	8	380.0178	8	408.1117
9	321.9791	9	351.7979	9	380.7305	9	408.8032
370	322.7356	410	352.5319	450	381.4427	490	409.4943
1	323.4915	1	353.2653	1	382.1543	1	410.1848
2	324.2468	2	353.9982	2	382.8654	2	410.8747
3	325.0016	3	354.7306	3	383.5760	3	411.5642
4	325.7558	4	355.4624	4	384.2860	4	412.2531
375	326.5094	415	356.1936	455	384.9958	495	412.9416
6	327.2625	6	356.9243	6	385.7045	6	413.6295
7	328.0150	7	357.6544	7	386.4130	7	414.3169
8	328.7669	8	358.3840	8	387.1209	8	415.0037
9	329.5183	9	359.1131	9	387.8282	9	415.6901
380	330.2691	420	359.8416	460	388.5351	500	416.3759
1	331.0194	1	360.5695	1	389.2414	1	417.0612
2	331.7690	2	361.2969	2	389.9472	2	417.7460
3	332.5181	3	362.0237	3	390.6524	3	418.4303
4	333.2667	4	362.7500	4	391.3571	4	419.1141
385	334.0147	425	363.4758	465	392.0613	505	419.7973
6	334.7621	6	364.2010	6	392.7650	6	420.4801
7	335.5089	7	364.9256	7	393.4681	7	421.1623
8	336.2552	8	365.6497	8	394.1707	8	421.8440
9	337.0010	9	366.3733	9	394.8727	9	422.5252
390	337.7461	430	367.0963	470	395.5742	510	423.2059
1	338.4907	1	367.8188	1	396.2752	1	423.8860
2	339.2348	2	368.5407	2	396.9757	2	424.5657
3	339 9782	3	369.2621	3	397.6757	3	425.2448
4	340.7212	4	369.9829	4	398.3751	4	425.9234
395	341.4635	435	370.7032	475	399.0740	515	426.6016
6	342.2053	6	371.4230	6	399.7723	6	427.2792
7	342.9466	7	372.1422	7	400.4702	7	427.9562
8	343.6872	8	372.8608	8	401.1675	8	428.6328
9	344.4274	9	373.5790	9	401.8642	9	429.3089
						520	429.9845

PRESENT VALUE TABLES

(Interest at 5% Per Annum)

Weeks	Present Value	Weeks	Present Value	Weeks	Present Value	Weeks	Present Value
0		35	34.4170	70	67.7251	105	99.9600
1	.9991	6	35.3839	1	68.6608	6	100.8656
2	1.9972	7	36.3498	2	69.5957	7	101.7703
3	2.9944	8	37.3149	3	70.5296	8	102.6742
4	3.9907	9	38.2791	4	71.4627	9	103.5772
5	4.9860	40	39.2423	75	72.3950	110	104.4794
6	5.9804	1	40.2047	6	73.3263	1	105.3808
7	6.9739	2	41.1662	7	74.2568	2	106.2813
8	7.9664	3	42.1267	8	75.1864	3	107.1810
9	8.9580	4	43.0864	9	76.1152	4	108.0798
10	9.9487	45	44.0451	80	77.0430	115	108.9778
1	10.9385	6	45.0030	1	77.9700	6	109.8749
2	11.9273	7	45.9600	2	78.8962	7	110.7712
3	12.9152	8	46.9161	3	79.8215	8	111.6667
4	13.9022	9	47.8713	4	80.7459	9	112.5613
15	14.8883	50	48.8256	85	81.6694	120	113.4551
6	15.8734	1	49.7790	6	82.5921	1	114.3480
7	16.8576	2	50.7315	7	83.5139	2	115.2402
8	17.8409	3	51.6831	8	84.4349	3	116.1314
9	18.8233	4	52.6338	9	85.3550	4	117.0219
20	19.8048	55	53.5836	90	86.2742	125	117.9115
1	20.7853	6	54.5326	1	87.1926	6	118.8003
2	21.7649	7	55.4807	2	88.1101	7	119.6883
3	22.7436	8	56.4278	3	89.0269	8	120.5754
4	23.7214	9	57.3741	4	89.9426	9	121.4617
25	24.6983	60	58.3195	95	90.8575	130	122.3471
6	25.6743	1	59.2640	6	91.7716	1	123.2318
7	26.6493	2	60.2077	7	92.6848	2	124.1156
8	27.6235	3	61.1504	8	93.5972	3	124.9986
9	28.5967	4	62.0923	9	94.5087	4	125.8807
30	29.5690	65	63.0333	100	95.4194	135	126.7621
1	30.5404	6	63.9734	1	96.3292	6	127.6426
2	31.5109	7	64.9126	2	97.2382	7	128.5223
3	32.5805	8	65.8510	3	98.1463	8	129.4011
4	33.4492	9	66.7885	4	99.0536	9	130.2792

Weeks	Present Value	Weeks	Present Value	Weeks	Present Value	Weeks	Present Value
140	131.1564	175	161.3476	210	190.5661	245	218.8432
1	132.0328	6	162.1958	1	191.5870	6	219.6376
2	132.9084	7	163.0432	2	192.2070	7	220.4313
3	133.7831	8	163.8897	3	193.0263	8	221.2242
4	134.6571	9	164.7355	4	194.8449	9	222.0163
145	135.5302	180	165.5805	215	194.6626	250	222.8078
6	136.4025	1	166.4247	6	195.4796	1	223.5984
7	137.2740	2	167.2681	7	196.2959	2	224.3884
8	138.1447	3	168.1107	8	197.1114	3	225.1776
9	139.0145	4	168.9526	9	197.9261	4	225.9660
150	139.8836	185	169.7936	220	198.7400	255	226.7538
1	140.7518	6	170.6339	1	199.3532	6	227.5408
2	141.6192	7	171.4734	2	200.3656	7	228.3270
3	142.4858	8	172.3121	3	201.1773	8	229.1125
4	143.3517	9	173.1500	4	201.9882	9	229.8973
155	144.2166	190	173.9871	225	202.7984	260	230.6814
6	145.0808	1	174.8234	6	203.6078	1	231.4647
7	145.9442	2	175.6590	7	204.4164	2	232.2473
8	146.8068	3	176.4938	8	205.2243	3	233.0291
9	147.6685	4	177.3278	9	206.0314	4	233.3102
160	148.5295	195	178.1610	230	206.8378	265	234.5906
1	149.3896	6	178.9934	1	207.6434	6	235.3703
2	150.2490	7	179.8251	2	208.4483	7	236.1492
3	151.1075	8	180.6560	3	209.2524	8	236.9274
4	151.9653	9	181.4861	4	210.0557	9	237.7049
165	152.8222	200	182.3154	235	210.8685	270	238.4817
6	153.6783	1	183.1430	6	211.6602	1	239.2577
7	154.5337	2	183.9717	7	212.4613	2	240.0330
8	155.3882	3	184.7987	8	213.2617	3	240.8075
9	156.2419	4	185.6250	9	214.0613	4	241.5814
170	157.0949	205	186.4504	240	214.8601	275	242.3545
1	157.9470	6	187.2751	1	215.6582	6	243.1269
2	158.7984	7	188.0990	2	216.4556	7	243.8986
3	159.6489	8	188.9222	3	217.2522	8	244.6695
4	160.4987	9	189.7445	4	218.8481	9	245.4398

Weeks	Present Value	Weeks	Present Value	Weeks	Present Value	Weeks	Present Value
280	246.2093	315	272.6936	350	298.3247	385	323.1299
1	246.9781	6	273.4377	1	299.0447	6	323.8268
2	247.7462	7	274.1810	2	299.7641	7	324.5230
3	248.5135	8	274.9236	3	300.4828	8	325.2185
4	249.2802	9	275.6656	4	301.2008	9	325.9134
285	250.0461	320	276.4068	355	301.9182	390	326.6077
6	250.8113	1	277.1474	6	302.6349	1	327.3013
7	251.5758	2	277.8872	7	303.3509	2	327.9942
8	252.3395	3	278.6264	8	304.0663	3	328.6865
9	353.1026	4	279.3649	9	304.7810	4	329.3782
290	253.8650	325	280.1026	360	305.4950	395	330.0692
1	254.6266	6	280.8397	1	306.2083	6	330.7595
2	255.3875	7	281.5761	2	306.9210	7	331.4493
3	256.1477	8	282.3119	3	307.6330	8	332.1383
4	256.9072	9	283.0469	4	308.3444	9	332.8268
295	257.6660	330	283.7812	365	309.0550	400	333.5145
6	258.4241	1	284.5149	6	309.7650	1	334.2017
7	259.1815	2	285.2478	7	310.4744	2	334.8882
8	259.9381	3	285.9801	8	311.1831	3	335.5740
9	260.6941	4	286.7117	9	311.8911	4	336.2592
300	261.4493	335	287.4426	370	312.5985	405	336.9438
1	262.2039	6	288.1729	1	313.3052	6	337.6278
2	262.9577	7	288.9024	2	314.0112	7	338.3111
3	263.7108	8	289.6313	3	314.7166	8	338.9937
4	264.4633	9	290.3595	4	315.4213	9	339.6757
305	265.2150	340	291.0870	375	316.1254	410	340.3571
6	265.9660	1	291.8138	6	316.8288	1	341.0378
7	266.7163	2	292.5399	7	317.5315	2	341.7179
8	267.4659	3	293.2654	8	318.2336	3	342.3974
9	268.2148	4	293.9902	9	318.9351	4	343.0762
310	268.9631	345	294.7143	380	319.6358	415	343.7544
1	269.7106	6	295.4377	1	320.3360	6	344.4320
2	270.4574	7	296.1605	2	321.0354	7	345.1089
3	271.2035	8	296.8825	3	321.7342	8	345.7852
4	271.9489	9	297.6039	4	322.4324	9	346.4609

Weeks	Present Value	Weeks	Present Value	Weeks	Present Value	Weeks	Present Value
420	347.1359	455	370.3685	490	392.8526	525	414.61
1	347.8103	6	371.0212	1	393.4842	30	417.66
2	348.4841	7	371.6732	2	394.1152	35	420.70
3	349.1572	8	372.3247	3	394.7457	40	423.72
4	349.8298	9	372.9755	4	395.3756	45	426.73
425	350.5016	460	373.6258	495	396.0049	550	429.72
6	351.1729	1	374.2754	6	396.6336	60	435.67
7	351.8435	2	374.9244	7	397.2617	70	441.56
8	352.5135	3	375.5728	8	397.8892	80	447.40
9	353.1829	4	376.2206	9	398.5161	90	453.18
430	353.8516	465	376.8678	500	399.1425	600	458.91
1	354.5197	6	377.5144	1	399.7682	25	473.00
2	355.1872	7	378.1604	2	400.3934	50	486.76
3	355.8541	8	378.8058	3	401.0180	75	500.20
4	356.5204	9	379.4506	4	401.6420	700	513.34
435	357.1860	470	380.0948	505	402.2654	750	538.70
6	357.8510	1	380.7383	6	402.8883	800	562.90
7	358.5154	2	381.3813	7	403.5105	850	586.00
8	359.1791	3	382.0237	8	404.1322	900	608.04
9	359.8423	4	382.6655	9	404.7533	950	629.07
440	360.5048	475	383.3066	510	405.3738	1000	649.14
1	361.1667	6	383.9472	1	405.9937	1100	686.58
2	361.8280	7	384.5872	2	406.6131	1200	720.67
3	362.4886	8	385.2265	3	407.2319	1300	751.71
4	363.1487	9	385.8653	4	407.8501	1400	779.99
445	363.8081	480	386.5035	515	408.4677	1500	805.73
6	364.4669	1	387.1411	6	409.0847	2000	903.81
7	365.1251	2	387.7781	7	409.7012	2500	965.24
8	365.7827	3	388.4145	8	410.3171	3000	1003.72
9	366.4396	4	389.0503	9	410.9324	3500	1027.82
450	367.0960	485	389.6855	520	411.5471	4000	1042.91
1	367.7517	6	390.3201	1	412.1613	5000	1058.29
2	368.4068	7	390.9541	2	412.7749	7500	1067.26
3	369.0613	8	391.5875	3	413.3879	10000	1068.12
4	369.7152	9	392.2203	4	414.0003	*	1068.22

* Perpetuity.

PRESENT VALUE TABLES

(Interest at 6% Per Annum)

Weeks	Present Value	Weeks	Present Value	Weeks	Present Value	Weeks	Present Value
0		35	34.3057	70	67.2963	105	99.9224
1	.9989	6	35.2663	1	68.2201	6	99.9107
2	1.9967	7	36.2258	2	69.1428	7	100.7981
3	2.9933	8	37.1842	3	70.0645	8	101.6845
4	3.9889	9	38.1416	4	70.9852	9	102.5699
5	4.9833	40	39.0979	75	71.9049	110	103.4543
6	5.9766	1	40.0532	6	72.8235	1	104.3377
7	6.9688	2	41.0073	7	73.7411	2	105.2201
8	7.9599	3	41.9605	8	74.6577	3	106.1016
9	8.9499	4	42.9125	9	75.5732	4	106.9820
10	9.9388	45	43.8635	80	76.4878	115	107.8615
1	10.9266	6	44.8134	1	77.4013	6	108.7400
2	11.9133	7	45.7623	2	78.3138	7	109.6175
3	12.8989	8	46.7101	3	79.2253	8	110.4941
4	13.8834	9	47.6569	4	80.1357	9	111.3696
15	14.8668	50	48.6025	85	81.0452	120	112.2442
6	15.8491	1	49.5472	6	81.9538	1	113.1178
7	16.8302	2	50.4908	7	82.8610	2	113.9904
8	17.8103	3	51.4333	8	83.7674	3	114.8621
9	18.7894	4	52.3748	9	84.6728	4	115.7328
20	19.7673	55	53.3152	90	85.5772	125	116.6025
1	20.7441	6	54.2546	1	86.4805	6	117.4712
2	21.7198	7	55.1929	2	87.3829	7	118.3390
3	22.6945	8	56.1302	3	88.2843	8	119.2058
4	23.6680	9	57.0664	4	89.1846	9	120.0716
25	24.6405	60	58.0016	95	90.0840	130	120.9365
6	25.6119	1	58.9358	6	90.9823	1	121.8004
7	26.5822	2	59.8689	7	91.8796	2	122.6634
8	27.5514	3	60.8009	8	92.7760	3	123.5253
9	28.5195	4	61.7320	9	93.6713	4	124.3863
30	29.4866	65	62.6619	100	94.5656	135	125.2464
1	30.4525	6	63.5909	1	95.4590	6	126.1055
2	31.4174	7	64.5188	2	96.3513	7	126.9636
3	32.3812	8	65.4457	3	97.2427	8	127.8208
4	33.3440	9	66.3715	4	98.1330	9	128.6770

Weeks	Present Value	Weeks	Present Value	Weeks	Present Value	Weeks	Present Value
140	129.5323	175	158.8727	210	187.0885	245	214.2226
1	130.3866	6	159.6943	1	187.8785	6	214.9824
2	131.2400	7	160.5149	2	188.6677	7	215.7413
3	132.0924	8	161.3346	3	189.4560	8	216.4994
4	132.9438	9	162.1535	4	190.2434	9	217.2567
145	133.7943	180	162.9714	215	191.0300	250	218.0131
6	134.6439	1	163.7884	6	191.8157	1	218.7686
7	135.4925	2	164.6044	7	192.6005	2	219.5233
8	136.3401	3	165.4196	8	193.3844	3	220.2772
9	137.1868	4	166.2338	9	194.1674	4	221.0302
150	138.0326	185	167.0472	220	194.9496	255	221.7824
1	138.8774	6	167.8596	1	195.7309	6	222.5338
2	139.7213	7	168.6712	2	196.5113	7	223.2843
3	140.5642	8	169.4819	3	197.2909	8	224.0340
4	141.4062	9	170.2915	4	198.0696	9	224.7828
155	142.2473	190	171.1003	225	198.8474	260	225.5308
6	143.0874	1	171.9082	6	199.6243	1	226.2780
7	143.9266	2	172.7153	7	200.4004	2	227.0243
8	144.7648	3	173.5214	8	201.1756	3	227.7698
9	145.6022	4	174.3266	9	201.9500	4	228.5145
160	146.4385	195	175.1309	230	202.7234	265	229.2583
1	147.2740	6	175.9343	1	203.4961	6	230.0013
2	148.1085	7	176.7368	2	204.2678	7	230.7435
3	148.9421	8	177.5385	3	205.0387	8	231.4848
4	149.7747	9	178.3392	4	205.8087	9	232.2253
165	150.6064	200	179.1390	235	206.5779	270	232.9650
6	151.4372	1	179.9380	6	207.3462	1	233.7039
7	152.2671	2	180.7360	7	208.1137	2	234.4419
8	153.0960	3	181.5332	8	208.8803	3	235.1792
9	153.9240	4	182.3295	9	209.6461	4	235.9155
170	154.7511	205	183.1248	240	210.4109	275	236.6511
1	155.5773	6	183.9193	1	211.1750	6	237.3859
2	156.4025	7	184.7129	2	211.9382	7	238.1198
3	157.2268	8	185.5057	3	212.7005	8	238.8529
4	158.0502	9	186.2975	4	213.4620	9	239.5852

Weeks	Present Value	Weeks	Present Value	Weeks	Present Value	Weeks	Present Value
280	240.3167	315	265.4105	350	289.5424	385	312.7494
1	241.0474	6	266.1132	1	290.2182	6	313.3992
2	241.7772	7	266.8150	2	290.8931	7	314.0483
3	242.5062	8	267.5161	3	291.5673	8	314.6966
4	243.2344	9	268.2164	4	292.2408	9	315.3443
285	243.9619	320	268.9160	355	292.9135	390	315.9912
6	244.6884	1	269.6147	6	293.5855	1	316.6374
7	245.4142	2	270.3127	7	294.2567	2	317.2829
8	246.1392	3	271.0098	8	294.9271	3	317.9276
9	246.8634	4	271.7062	9	295.5968	4	318.5717
290	247.5867	325	272.4019	360	296.2658	395	319.2150
1	248.3093	6	273.0967	1	296.9340	6	319.8576
2	249.0310	7	273.7908	2	297.6015	7	320.4995
3	249.7519	8	274.4841	3	298.2682	8	321.1406
4	250.4721	9	275.1766	4	298.9342	9	321.7811
295	251.1914	330	275.8684	365	299.5994	400	322.4208
6	251.9099	1	276.5594	6	300.2639	1	323.0599
7	252.6276	2	277.2496	7	300.9277	2	323.6982
8	253.3446	3	277.9390	8	301.5907	3	324.3358
9	254.0607	4	278.6277	9	302.2530	4	324.9727
300	254.7760	335	279.3156	370	302.9145	405	325.6088
1	255.4905	6	280.0027	1	303.5753	6	326.2443
2	256.2043	7	280.6891	2	304.2354	7	326.8790
3	256.9172	8	281.3747	3	304.8947	8	327.5131
4	257.6293	9	282.0595	4	305.5533	9	328.1464
305	258.3407	340	282.7436	375	306.2111	410	328.7791
6	259.0512	1	283.4269	6	306.8682	1	329.4110
7	259.7610	2	284.1094	7	307.5246	2	330.0422
8	260.4690	3	284.7912	8	308.1803	3	330.6727
9	261.1781	4	285.4722	9	308.8352	4	331.3025
310	261.8855	345	286.1525	380	309.4894	415	331.9317
1	262.5920	6	286.8320	1	310.1428	6	332.5601
2	263.2978	7	287.5108	2	310.7955	7	333.1878
3	264.0029	8	288.1887	3	311.4475	8	333.8148
4	264.7071	9	288.8660	4	312.0988	9	334.4411

Weeks	Present Value	Weeks	Present Value	Weeks	Present Value	Weeks	Present Value
420	335.0667	455	356.5286	490	377.1677	525	397.02
1	335.6916	6	357.1295	1	377.7457	30	399.79
2	336.3158	7	357.7298	2	378.3229	35	402.55
3	336.9393	8	358.3294	3	378.6996	40	405.29
4	337.5621	9	358.9284	4	379.4756	45	408.01
425	338.1843	460	359.5266	495	380.0509	550	410.73
6	338.8057	1	360.1242	6	380.6256	60	416.10
7	339.4264	2	360.7212	7	381.1997	70	421.42
8	340.0463	3	361.3175	8	381.7731	80	426.68
9	340.0658	4	361.9131	9	382.3459	90	431.88
430	341.2845	465	362.5080	500	382.9180	600	437.02
1	341.9025	6	363.1023	1	383.4895	25	449.63
2	342.5197	7	363.6959	2	384.0604	50	461.89
3	343.1363	8	364.2889	3	384.6306	75	473.82
4	343.7322	9	364.8812	4	385.2002	700	485.42
435	344.3674	470	365.4728	505	385.7691	750	507.65
6	344.9820	1	366.0638	6	386.3375	800	528.69
7	345.5958	2	366.6541	7	386.9051	850	548.58
8	346.2090	3	367.2437	8	387.4722	900	567.39
9	346.8214	4	367.8327	9	388.0386	950	585.18
440	347.4332	475	368.4211	510	388.6044	1000	602.00
1	348.0443	6	369.0087	1	389.1695	1100	632.96
2	348.6548	7	369.5958	2	389.7341	1200	660.64
3	349.2645	8	370.1821	3	390.2980	1300	685.40
4	349.8736	9	370.7679	4	390.8612	1400	707.54
445	350.4820	480	371.3529	515	391.4239	1500	727.35
6	351.0897	1	371.9373	6	391.9850	2000	799.06
7	351.6967	2	372.5211	7	392.5473	2500	840.09
8	352.3030	3	373.1042	8	393.1080	3000	863.57
9	352.9087	4	373.6866	9	393.6681	3500	877.00
450	353.5137	485	374.2685	520	394.2276	4000	884.68
1	354.1180	6	374.8496	1	394.7865	5000	891.60
2	354.7217	7	375.4301	2	395.3448	7500	894.75
3	355.3246	8	376.0100	3	395.9024	10000	894.95
4	355.9269	9	376.5802	4	396.4594	*	894.96

* Perpetuity.

HOW TO COMPUTE COMPENSATION

Daily wage	Times 300 days	Equals yearly wage	Divided by 52 weeks	Equals weekly wage	Of which 50%	Equals weekly compensation	Divided by working days of week	Equals daily compensation
1.25	300	375.00	52	7.21	50	3.60	6	.60
1.26	300	378.00	52	7.27	50	3.63	6	.60
1.27	300	381.00	52	7.33	50	3.66	6	.61
1.28	300	384.00	52	7.38	50	3.69	6	.61
1.29	300	387.00	52	7.44	50	3.72	6	.62
1.30	300	390.00	52	7.50	50	3.75	6	.62
1.31	300	393.00	52	7.55	50	3.77	6	.63
1.32	300	396.00	52	7.61	50	3.80	6	.63
1.33	300	399.00	52	7.67	50	3.83	6	.64
1.34	300	402.00	52	7.73	50	3.86	6	.64
1.35	300	405.00	52	7.79	50	3.89	6	.65
1.36	300	408.00	52	7.85	50	3.92	6	.65
1.37	300	411.00	52	7.90	50	3.95	6	.66
1.38	300	414.00	52	7.96	50	3.98	6	.66
1.39	300	417.00	52	8.02	50	4.00	6	.67
1.40	300	420.00	52	8.07	50	4.03	6	.67
1.41	300	423.00	52	8.13	50	4.06	6	.68
1.42	300	426.00	52	8.19	50	4.09	6	.68
1.43	300	429.00	52	8.25	50	4.12	6	.69
1.44	300	432.00	52	8.30	50	4.15	6	.69
1.45	300	435.00	52	8.36	50	4.18	6	.70
1.46	300	438.00	52	8.42	50	4.21	6	.70
1.47	300	441.00	52	8.48	50	4.24	6	.71
1.48	300	444.00	52	8.54	50	4.27	6	.71
1.49	300	447.00	52	8.59	50	4.29	6	.71
1.50	300	450.00	52	8.65	50	4.32	6	.72
1.51	300	453.00	52	8.71	50	4.35	6	.72
1.52	300	456.00	52	8.77	50	4.37	6	.73
1.53	300	459.00	52	8.82	50	4.41	6	.73
1.54	300	462.00	52	8.88	50	4.44	6	.74
1.55	300	465.00	52	8.94	50	4.47	6	.74
1.56	300	468.00	52	9.00	50	4.50	6	.75
1.57	300	471.00	52	9.06	50	4.53	6	.75
1.58	300	474.00	52	9.11	50	4.55	6	.76
1.59	300	477.00	52	9.17	50	4.58	6	.76
1.60	300	480.00	52	9.23	50	4.61	6	.77
1.61	300	483.00	52	9.29	50	4.64	6	.77
1.62	300	486.00	52	9.35	50	4.67	6	.78
1.63	300	489.00	52	9.40	50	4.70	6	.78
1.64	300	492.00	52	9.46	50	4.73	6	.79
1.65	300	495.00	52	9.52	50	4.76	6	.79
1.66	300	498.00	52	9.58	50	4.79	6	.80
1.67	300	501.00	52	9.63	50	4.81	6	.80
1.68	300	504.00	52	9.69	50	4.84	6	.81
1.69	300	507.00	52	9.75	50	4.87	6	.81
1.70	300	510.00	52	9.81	50	4.90	6	.82
1.71	300	513.00	52	9.86	50	4.93	6	.82
1.72	300	516.00	52	9.92	50	4.96	6	.83
1.73	300	519.00	52	9.98	50	4.99	6	.83
1.74	300	522.00	52	10.04	50	5.02	6	.84
1.75	300	525.00	52	10.09	50	5.04	6	.84
1.76	300	528.00	52	10.15	50	5.07	6	.84
1.77	300	531.00	52	10.21	50	5.10	6	.85
1.78	300	534.00	52	10.27	50	5.13	6	.85
1.79	300	537.00	52	10.33	50	5.16	6	.86
1.80	300	540.00	52	10.38	50	5.19	6	.86
1.81	300	543.00	52	10.44	50	5.22	6	.87
1.82	300	546.00	52	10.50	50	5.25	6	.87
1.83	300	549.00	52	10.56	50	5.28	6	.88
1.84	300	552.00	52	10.61	50	5.30	6	.88
1.85	300	555.00	52	10.67	50	5.33	6	.89
1.86	300	558.00	52	10.73	50	5.36	6	.89
1.87	300	561.00	52	10.79	50	5.39	6	.90

HOW TO COMPUTE COMPENSATION

Daily wage	Times 300 days	Equals yearly wage	Divided by 52 weeks	Equals weekly wage	Of which 50%	Equals weekly compensation	Divided by working days of week	Equals daily compensation
1.88	300	564.00	52	10.85	50	5.42	6	.90
1.89	300	567.00	52	10.90	50	5.45	6	.91
1.90	300	570.00	52	10.96	50	5.48	6	.91
1.91	300	573.00	52	11.02	50	5.51	6	.92
1.92	300	576.00	52	11.08	50	5.54	6	.92
1.93	300	579.00	52	11.13	50	5.56	6	.93
1.94	300	582.00	52	11.19	50	5.59	6	.93
1.95	300	585.00	52	11.25	50	5.62	6	.94
1.96	300	588.00	52	11.31	50	5.65	6	.94
1.97	300	591.00	52	11.36	50	5.68	6	.95
1.98	300	594.00	52	11.42	50	5.71	6	.95
1.99	300	597.00	52	11.48	50	5.74	6	.96
2.00	300	600.00	52	11.54	50	5.77	6	.96
2.01	300	603.00	52	11.59	50	5.79	6	.96
2.02	300	606.00	52	11.65	50	5.82	6	.97
2.03	300	609.00	52	11.71	50	5.85	6	.97
2.04	300	612.00	52	11.77	50	5.88	6	.98
2.05	300	615.00	52	11.82	50	5.91	6	.98
2.06	300	618.00	52	11.88	50	5.94	6	.99
2.07	300	621.00	52	11.94	50	5.97	6	.99
2.08	300	624.00	52	12.00	50	6.00	6	1.00
2.09	300	627.00	52	12.06	50	6.03	6	1.00
2.10	300	630.00	52	12.11	50	6.05	6	1.01
2.11	300	633.00	52	12.17	50	6.08	6	1.01
2.12	300	636.00	52	12.23	50	6.11	6	1.02
2.13	300	639.00	52	12.29	50	6.14	6	1.02
2.14	300	642.00	52	12.35	50	6.17	6	1.03
2.15	300	645.00	52	12.40	50	6.20	6	1.03
2.16	300	648.00	52	12.46	50	6.23	6	1.04
2.17	300	651.00	52	12.52	50	6.26	6	1.04
2.18	300	654.00	52	12.58	50	6.29	6	1.05
2.19	300	657.00	52	12.63	50	6.31	6	1.05
2.20	300	660.00	52	12.69	50	6.34	6	1.06
2.21	300	663.00	52	12.75	50	6.37	6	1.06
2.22	300	666.00	52	12.81	50	6.40	6	1.07
2.23	300	669.00	52	12.86	50	6.43	6	1.07
2.24	300	672.00	52	12.92	50	6.46	6	1.08
2.25	300	675.00	52	12.98	50	6.49	6	1.08
2.26	300	678.00	52	13.04	50	6.52	6	1.09
2.27	300	681.00	52	13.10	50	6.55	6	1.09
2.28	300	684.00	52	13.15	50	6.57	6	1.09
2.29	300	687.00	52	13.21	50	6.60	6	1.10
2.30	300	690.00	52	13.27	50	6.63	6	1.10
2.31	300	693.00	52	13.33	50	6.66	6	1.11
2.32	300	696.00	52	13.38	50	6.69	6	1.11
2.33	300	699.00	52	13.44	50	6.72	6	1.12
2.34	300	702.00	52	13.50	50	6.75	6	1.12
2.35	300	705.00	52	13.56	50	6.78	6	1.13
2.36	300	708.00	52	13.61	50	6.80	6	1.13
2.37	300	711.00	52	13.67	50	6.83	6	1.14
2.38	300	714.00	52	13.73	50	6.86	6	1.14
2.39	300	717.00	52	13.79	50	6.89	6	1.15
2.40	300	720.00	52	13.85	50	6.92	6	1.15
2.41	300	723.00	52	13.90	50	6.95	6	1.16
2.42	300	726.00	52	13.96	50	6.98	6	1.16
2.43	300	729.00	52	14.02	50	7.01	6	1.17
2.44	300	732.00	52	14.08	50	7.04	6	1.17
2.45	300	735.00	52	14.13	50	7.06	6	1.18
2.46	300	738.00	52	14.19	50	7.09	6	1.18
2.47	300	741.00	52	14.25	50	7.12	6	1.19
2.48	300	744.00	52	14.31	50	7.15	6	1.19
2.49	300	747.00	52	14.37	50	7.18	6	1.20
2.50	300	750.00	52	14.42	50	7.21	6	1.20

FORMS FOR USE BEFORE INDUSTRIAL COMMISSION OF ILLINOIS

FORMS

NO. 1

EMPLOYER'S WRITTEN ACCEPTANCE OF ILLINOIS WORKMEN'S COMPENSATION ACT

To the Industrial Commission of Illinois:

Take notice that the undersigned employer of labor in Illinois accepts the provisions of the Act of July 1, 1919, Laws of Illinois, 1919, p. 538, commonly known as the Workmen's Compensation Act, and elects to provide and pay compensation for accidental injuries to employees, in accordance therewith.

Number of employees.....

Location of place of employment.....

(If more than one plant, place of business or work place, state each fully.)

.....

Nature of employment.....

(If more than one kind, state each fully, with location.)

.....

Method of providing for compensation adopted by the undersigned.....

.....

(State whether Mutual Insurance (give name), Insurance Company (give

.....

name), or carry own risk.)

Dated at ....., this ..... day of ....., 19...

.....

.....

By.....

P. O. .....

NOTE.—If employer wishes affirmatively to accept the provisions of the law, this notice must be signed by the employer and filed with the Industrial Commission. When so filed it becomes immediately binding on the employer. If employer is a corporation, the notice should have the corporate name and seal affixed and be signed by an officer having authority to do so. See § 1 (a) of Act.

NO. 2

EMPLOYER'S WITHDRAWAL OF ACCEPTANCE OF PROVISIONS OF WORKMEN'S COMPENSATION ACT

To the Industrial Commission of the State of Illinois:

Please take notice that the undersigned, an employer of labor in the State of Illinois, hereby withdraws ..... election to be subject to the provisions of an act of the Legislature of the State of Illinois entitled, "An Act to promote the general welfare of the people of this State by providing compensation for accidental injuries or death suffered in the course of employment within this State; providing for the enforcement and administering thereof, and a penalty for its violation, and repealing an Act entitled, 'An Act to promote the general welfare of the people of this State by providing compensation for accidental injuries or death suffered in the course of employment,' approved June 10, 1911, in force May 1, 1912," approved June 28, in force July 1, 1913, with amendments in force July 1, 1919.

Dated at ....., Illinois, this ..... day of ....., 19...

Signed .....(Seal)
.....
P. O. address.....
City .....

NOTE.—This notice, to be effective for the next succeeding year, must be filed in the office of the Industrial Commission at least sixty days prior to January first of the year for which the employer wishes to withdraw. See § 1 (b) of Act.

NO. 3

NOTICE BY EMPLOYEE OF ELECTION NOT TO BE SUBJECT TO THE PROVISIONS OF THE WORKMEN'S COMPENSATION ACT

To the Industrial Commission, of Illinois, and to:

.....

(Write name of employer on above line.)

.....

(Write address of employer on above line.)

You will please take notice that the undersigned, now in (or being about to enter), the employment of ....., at ....., hereby elects not to be subject to the provisions of an Act of the Legislature of the State of Illinois entitled: "An Act to promote the general welfare of the people of this State by providing compensation for accidental injuries or death suffered in the course of employment within this State; providing for the enforcement and administering thereof, a penalty for its violation, and repealing an Act entitled, 'An Act to promote the general welfare of the people of this State by providing compensation for accidental injuries or death suffered in the course of employment,' approved June 10, 1911, in force May 1, 1912," approved June 28, 1913, in force July 1, 1913, with amendments in force July 1, 1919, commonly known as the Workmen's Compensation Act.

Dated at ....., Illinois, this ..... day of ....., 19...

Signed .....
P. O. address.....
City .....

NOTE.—If the employer has elected to become subject to the compensation provisions of the Act above referred to, then the employee comes under said provisions (1) unless within thirty (30) days after the time of entering into the employment, the employee files with the Industrial Commission of Illinois, the above notice, or (2) if the contract of hire was made before the date of the employer's election, unless within thirty (30) days after such election by the employer the employee files said notice. See § 1 (b) of Act. Upon receipt of such notice it is the duty of the Industrial Commission immediately to notify the employer.

NO. 4

EMPLOYEE'S WITHDRAWAL OF ACCEPTANCE OF PROVISIONS OF WORKMEN'S COMPENSATION ACT

To the Industrial Commission of the State of Illinois:

Please take notice that the undersigned, an employee in the service of ....., an employer of labor at ....., in the State of Illinois, hereby withdraws ..... election to be subject to the provisions of an act of the Legislature of the State of Illinois entitled: "An Act to promote the general welfare of the people of this State by providing compensation for accidental injuries or death suffered in the course of employment within this State; providing for the enforcement and administering thereof, and a penalty for its violation, and repealing an Act entitled, 'An Act to promote the general welfare of the people of this State by providing compensation for accidental injuries or death suffered in the course of employment,' approved June 10, 1911, in force May 1, 1912," approved June 28, 1913, in force July 1, 1913, with amendments in force July 1, 1919.

Dated at ....., Illinois, this ..... day of ....., 19...

Signed .....(Seal)
.....
P. O. address.....
City .....

NOTE.—This notice must be filed with the Industrial Commission ten (10) days prior to January first of any succeeding year during which the employee does not wish to be subject to the Act. See § 1 (c) of Act.

NO. 5

EMPLOYER'S WITHDRAWAL OF REJECTION OF PROVISIONS OF WORKMEN'S COMPENSATION ACT

To the Industrial Commission of Illinois:

Take notice that the undersigned employer of labor in Illinois hereby withdraws ..... election to reject the Workmen's Compensation Act of the State of Illinois (Laws 1919, p. 538) heretofore filed with the Industrial Commission of Illinois, on or about the ..... day of ....., 19.., and the undersigned hereby accepts the provisions of said Act.

Number of employees.....

Location of place of employment.....

.....

(If more than one plant, place of business or work place, state each fully.)

Nature of employment.....

.....

(If more than one kind, state each fully, with location.)

Method of providing for compensation.....

.....

(State whether mutual insurance company (give name), stock insurance company (give name), or carry own risk.)

Dated ....., this ..... day of ....., 19...

.....

.....

By .....

P. O. address.....

NOTE.—If the employer wishes to withdraw his rejection of the Act he must file this notice with the Industrial Commission, or serve it on his employees, or both, as the Commission shall direct, thirty (30) days prior to the date he wishes to accept and be governed by the Act. See § 1 (d) of Act.

NO. 6

EMPLOYEE'S WITHDRAWAL OF REJECTION OF PROVISIONS OF WORKMEN'S COMPENSATION ACT

To the Industrial Commission of Illinois:

Take notice that the undersigned, an employee in the service of....., an employer of labor at ....., Illinois, hereby withdraws ..... election to reject the Workmen's Compensation Act of the State of Ilinois (Laws 1919, p. 538), heretofore filed with the Industrial Commission, of Illinois, on or about the ..... day of ..... 19.., and the undersigned hereby accepts the provisions of said Act.

Dated ....., this ..... day of ....., 19...

.....

P. O. address.....

City .....

NOTE.—If the employee wishes to withdraw his rejection of the Act, he must file this notice with the Industrial Commission, or serve it on his employer, or both, as the Commission shall direct, thirty (30) days prior to the date he wishes to accept and be governed by the Act. See § 1 (d) of Act.

NO. 7

REQUEST FOR PHYSICAL EXAMINATION

To ....., *Employee, at* .....:

YOU ARE HEREBY REQUESTED to submit yourself, at the expense of the undersigned employer, for examination by a duly qualified medical practitioner or surgeon to be selected by the undersigned employer, and for that purpose to be and appear at ....., on the ..... day of ....., at ..... o'clock .... M., and if such time and place is not reasonably convenient you are requested immediately to notify the undersigned employer what time and place will be reasonably convenient for you to submit to such examination, which examination shall be for the purpose of determining the nature, extent and probable duration of the injury claimed to have been received by you, on or about the ..... day of ....., 19.., and for the purpose of ascertaining the amount of compensation, if any, which may be due on account of any disability resulting therefrom.

Dated this ..... day of ....., 19...

.....
Employer.

Address .....

NOTE.—See § 12 of Act.

NO. 8

AGREEMENT IN SETTLEMENT OF COMPENSATION

We, the undersigned, employee and employer, agree as follows:

First.—That ....., the undersigned employer, and ..... the undersigned employee, are and were on the date of the accident herein referred to, subject to the provisions of an Act of the Legislature of the State of Illinois, entitled "An Act to promote the general welfare of the people of this State by providing compensation for accidental injuries or death suffered in the course of employment within this State; providing for the enforcement and administering thereof, and a penalty for its violation, and repealing an Act entitled, 'An Act to promote the general welfare of the people of this State by providing compensation for accidental injuries or death suffered in the course of employment,' approved June 10, 1911, in force May 1, 1912," approved June 28, 1913, in force July 1, 1913, with amendments in force July 1, 1919, commonly known as the "Workman's Compensation Act."

Second.—That the undersigned employee was accidentally injured on the ..... day of ....., 19.., while in the service of the undersigned employer, which accidental injury arose out of and in the course of the employment of said employee.

Third.—That the nature of said accidental injury was as follows: (Set it out in detail.)

.....

Fourth.—That the average annual earnings of the undersigned employee at the time of said accidental injury was ..... dollars, paid in installments of ..... dollars per .....

Fifth.—That the undersigned employer has furnished and will continue to furnish to the undersigned employee necessary first aid medical, surgical and hospital services, and also if reasonably required medical, surgical and hospital services for a period not longer than eight (8) weeks, and not to exceed the amount of Two Hundred Dollars ($200.00).

Sixth.—That the nature, extent and probable duration of the undersigned employee's disability, as agreed to by the undersigned, is as follows: (Set it out).....

.....

Seventh.—That the undersigned employer agrees to pay compensation at the rate of ..... dollars ($.....) per ....., covering the period of the probable duration of disability as agreed upon in Paragraph Sixth hereof, in the following amounts, and according to the following terms, to-wit:

(Here specify sum to be paid, amount of installments, method of payment, etc.)

.....

Eighth.—The undersigned employee agrees to accept the medical, surgical and hospital service, and the compensation paid and herein agreed to be furnished and paid by the undersigned employer, in full settlement and discharge of all liability of the undersigned employer for compensation arising under the provisions of said Workmen's Compensation Act on account of said accidental injury.

Ninth.—It is agreed by both parties hereto that no application for a review of this agreement shall be made to the Industrial Commission of the

State of Illinois, under the provisions of said Workmen's Compensation Act, except only on the ground that the disability of the undersigned employee has subsequently to the execution of this Agreement, recurred, increased, diminished or ended.

IN WITNESS WHEREOF the parties have executed this agreement this ..... day of ....., 19...

.....
Employer.
P. O. address.....
.....
Employee.
P. O. address.....

NOTE.—Agreements are subject to review by the Industrial Commission within eighteen (18) months, on "the ground that the disability of the employee has subsequently recurred, increased, diminished or ended." See § 19 (h) of Act.

NO. 9

NOTICE OF DISPUTED CLAIM

To the Industrial Commission of Illinois:

TAKE NOTICE that ....., of
(Insert name of employer.)
....., and ..... of .....,
(Insert name of employee.)
have failed to reach an agreement between themselves with reference to a claim for compensation under the Workmen's Compensation Act of the State of Illinois (Illinois Laws, 1919, p. 538), arising out of an alleged accidental injury on the ..... day of ....., 19.., and the undersigned therefore requests that said claim may be arbitrated in accordance with the provisions of said Act, and that your Honorable Commission may take the requisite steps in accordance with the provisions of said Act to designate an arbitrator to hear and determine said claim.

Dated this ..... day of ....., 19...

.....
(Employer or employee as the case may be.)
Address .....

NOTE.—See § 19 of Act.

NO. 10

ILLINOIS INDUSTRIAL COMMISSION

Application for Adjustment of Claim

.....
Applicant....,
v.
.....
Respondent...

The petition of the above named applicant.. respectfully shows to your Honorable Commission as follows, to-wit:

I

That on the .... day of ....., 19.., ...
(Name of person injured.)
was ..... by reason of an accident arising out
(Killed or injured.)
of and in the course of h..... employment by the above named .....
(Name of employer.)
That your petitioner is the.....
(If applicant is a dependent, state rela-
..... person injured.
tionship.)

II

That a question has arisen with respect to the compensation to be paid therefor and the general nature of the claim in controversy is as follows, to-wit:

(Give the date that employer refused to pay the compensation demanded, and state briefly the exact matter in dispute, as for example:

(A) Employer denies liability for compensation; or,

(B) A dispute has arisen concerning the amount or duration of the compensation payable.)

.....

III

That the following is a statement of particulars relative to this application:

1. Name of injured employee .....
   Address .....
   Occupation .....
2. Name of employer .....
   Address .....
   Place of business .....
   Business address .....

3.	Names and addresses of all other parties to this application, and reason such parties are joined.	.....
4.	Place of accident	.....
5.	Nature of work on which injured person was engaged at time of accident.	.....
6.	Description of accident and cause of injury.	.....
7.	State whether or not medical and surgical, etc., treatment required, and whether furnished by employer or not.	.....
8.	Name of attending physician Address	....
9.	Nature of injury	.....
10.	Has injured person fully recovered? If so, when?	....
11.	Particulars of disability, whether total or partial, and estimated duration thereof. If death resulted, so state, giving date of death.	.....
12.	Average earnings of employee prior to accident.	$.....per week. $.....per month. $.....per year.
13.	Amount injured person is earning, or is able to earn in some suitable employment or business after the accident.	$.....per week. $.....per month.
14.	Payment, allowance or benefit received from employer during period of disability.	$.....account medical care and attendance. $.....per week for ..... weeks' total disability. $.....per week for ..... weeks' partial disability.
15.	Additional amount claimed as compensation.	$.....account medical care and attendance. $.....per week for ..... weeks' total disability. $.....per week for ..... weeks' partial disability.
16.	Date of service on the employer of notice of accident.	.....
17.	If notice not served within thirty days, reason for omission to serve same.	.....

18.	If application is filed to adjust claim for death, state name, address and relationship of all dependents. If to adjust claim for medical attendance or burial expenses, state name and address of all other such creditors and amount of claims, if known.	Name ..... Address ..... Name ..... Address ..... Name ..... Address .....

IV

(Here state any further facts that may be desired) .....
.....

Wherefore your petitioner prays, that the above named respondent be required to answer this petition, that a time and place be fixed for hearing hereof and due notice thereof given, and that upon such hearing, an order or award be made by your Honorable Commission granting such relief as the said applicant may be entitled to in the premises.

Dated at ....., this ..... day of ....., 19...
Signed .....
Address .....

NOTE.—See § 19 of Act.

NO. 11

REQUEST FOR APPOINTMENT OF ARBITRATORS

STATE OF ILLINOIS, } ss.
..... County. }

BEFORE THE INDUSTRIAL COMMISSION OF ILLINOIS

.....
Applicant,
v.
.....
Respondent.

To .....:
.....:

You are hereby notified to appoint a representative on a committee of arbitration, to arbitrate the above matter, and to file your notice of such appointment with the Industrial Commission, at ....., Illinois, within seven (7) days after the receipt of this notice, in default of which said Industrial Commission will appoint a suitable person to act for you as a member of said Committee of Arbitration, for the purpose of hearing and determining all questions in dispute between the parties in the above entitled matter.

Dated this ..... day of ....., 19...

INDUSTRIAL COMMISSION OF ILLINOIS,
By .....,
Secretary..

[SEAL]

NOTE.—See § 19 of Act.

NO. 12

NOTICE OF APPOINTMENT OF MEMBER OF COMMITTEE OF ARBITRATION

STATE OF ILLINOIS, } ss.
..... County. }

BEFORE THE INDUSTRIAL COMMISSION OF ILLINOIS

.....
Applicant,
v.
.....
Respondent.

To the Industrial Commission of Illinois:

Gentlemen: You are hereby notified that..... whose Post Office address is ....., has been chosen as a member of the Committee of Arbitration in the above entitled matter by the undersigned.

Dated this ..... day of ....., 19..

(Signed).....
(Applicant or respondent as case may be.)

NOTE.—This appointment must be filed with the Industrial Commission within seven (7) days after notice from the Commission to make such appointment. See § 19 of Act.

NO. 13

NOTICE OF APPOINTMENT OF MEMBER OF COMMITTEE OF ARBITRATION BY INDUSTRIAL COMMISSION TO FILL VACANCY

STATE OF ILLINOIS, } ss.
..... County. }

BEFORE THE INDUSTRIAL COMMISSION OF ILLINOIS

.....
Applicant,
v.
.....
Respondent.

To .....:
.....:

You are hereby notified that the Industrial Commission has appointed ....., of ....., in the above entitled matter to act as a member of the Committee of Arbitration, representing ..... of ....., who failed to appoint a representative on said Committee of Arbitration within seven (7) days after notification by the Industrial Commission, as required by statute, and that therefore the above named appointee of this Commission will act on said Committee of Arbitration.

Dated ....., Illinois, the ..... day of ....., 19...
INDUSTRIAL COMMISSION OF ILLINOIS,
By .....,
Secretary.

[SEAL]

NOTE.—See § 19 of Act.

NO. 14

STATE OF ILLINOIS, }
..... County. } ss.

ILLINOIS INDUSTRIAL COMMISSION.

BEFORE THE ARBITRATOR (OR COMMITTEE OF ARBITRATION.)

.....
Applicant,

NOTICE OF HEARING

v.

.....
Respondent.

To .....:
.....:

You are hereby notified that a hearing will be held before the Arbitrator (or Committee of Arbitration) in the above entitled matter on the ..... day of ....., at No. ..... St., in the city of ....., Illinois.

Dated ....., this ..... day of ....., 19...

ARBITRATOR (OR COMMITTEE OF ARBITRATION,
By .....,
Member of Committee.)

NOTE.—This notice should be served by the Arbitrator or Arbitration Committee upon each party ten (10) days prior to the hearing.

NO. 15

ILLINOIS INDUSTRIAL COMMISSION
WITNESS SUBPOENA

STATE OF ILLINOIS, }
..... County. } ss.

To .....:
....., Greeting.

You are hereby required and commanded to be and appear before ..... of the Industrial Commission of Illinois, at the ..... in the city of ....., county of ....., State of Illinois, on the ..... day of ....., A. D. 19.., at ..... o'clock in the .....noon, then and there to give evidence in a certain matter pending before said .....
.....
wherein ..... is applicant and ..... is respondent. Hereof fail at your peril.

Given under the hand and seal of said Commission this ..... day of ....., A. D. 19...

INDUSTRIAL COMMISSION OF ILLINOIS,
By .....,
Member of the Commission.

[SEAL]

NOTE.—The Industrial Commission or any member thereof is authorized to subpoena witnesses. See § 16 of Act.

NO. 16

ILLINOIS INDUSTRIAL COMMISSION

NOTICE TO PRODUCE BOOKS, PAPERS AND RECORDS

To ..... *Greeting:*

You are hereby required and commanded to appear and produce before ..... of the Industrial Commission of Illinois, at the ..... in the city of ....., county of ....., State of Illinois, on the ..... day of ....., 19.., at .... o'clock ....M, the following books, papers and documents, ...

.....

(Insert books, papers and documents required)

relating to the matter now pending before said Industrial Commission wherein ..... is applicant and ..... is respondent.

Hereof fail at your peril.

Given under the hand and seal of said Commission this ..... day of ....., A. D. 19...

INDUSTRIAL COMMISSION OF ILLINOIS,

By .....,

Member of the Commission.

[SEAL]

See § 16 of Act.

NO. 17

ILLINOIS INDUSTRIAL COMMISSION

APPOINTMENT OF PHYSICIAN FOR EXAMINATION OF INJURED WORKMAN

....., Ill., ..., 19...

To ..... M. D.,

....., Ill.

You are hereby appointed by the Industrial Commission of the State of Illinois to examine ....., an injured employee, who claims workman's compensation from ..... of ....., on account of an accidental injury alleged to have been sustained by said employee on the ..... day of .....; such examination to be made by you on the ..... day of ..... at ..... o'clock, ...M., at ....., Ill., unless you are later notified of a change in the time and place of making such examination.

Dated this ..... day of ....., 19...

INDUSTRIAL COMMISSION OF ILLINOIS,

By .....,

[SEAL] *Member of the Commission.*

NOTE.—The fee allowed the physician for making this examination is $5.00 and traveling expenses, but the Commission may allow additional reasonable amounts in extraordinary cases. See § 19 (c) of Act.

NO. 18

ILLINOIS INDUSTRIAL COMMISSION

BEFORE THE COMMITTEE OF ARBITRATION (OR ARBITRATOR)

..... Applicant, v. ..... Respondent.	AWARD.

Notice and application for adjustment of claim having been filed with said Commission in the above entitled matter, and thereafter said Commission having requested both of the parties to appoint their respective representatives on the committee of arbitration (or, having designated the undersigned arbitrator), and said committee of arbitration having been duly formed, consisting of ....., representing said applicant, and ....., representing said respondent, and ..... representing the Industrial Commission, as chairman thereof; and said matter having come on to be heard before the aforesaid arbitration committee (or arbitrator) at ....., in the city of ....., county of ....., and State of Illinois, on the ..... day of ....., 19.., at .... o'clock in the ....noon, and after hearing the proofs and allegations of the said applicant and said respondent, and said committee (or arbitrator) having made careful inquiry and investigation of said matter and being fully advised in the premises, doth find, determine and adjudge that the said applicant, ..., is entitled to receive and recover from said respondent ....., the sum of ..... dollars per week for a period of .... weeks, from the ..... day of ....., 19.., and that said applicant is entitled to receive and recover from said respondent on this date ..... dollars, being the amount of such compensation that has already become due under the compensation law, the remainder of said award to be paid to said ....., applicant, by said respondent in weekly payments, commencing one week from the date of the award (or semi-monthly, as the case may be).

....

COMMITTEE OF ARBITRATION,
(OR ARBITRATOR),
....., *Chairman.*
.....
.....

Dated and entered this ..... day of ....., A. D. 19...

NO. 19

NOTICE OF DECISION OF ARBITRATION COMMITTEE OR ARBITRATOR

STATE OF ILLINOIS, } ss.
..... County. }

ILLINOIS INDUSTRIAL COMMISSION

Before the Committee of Arbitration (or Arbitrator)

.....
Applicant,

v.

.....
Respondent.

To .....:
.....:

Take notice that on the ..... day of ....., there was filed with the Industrial Commission of Illinois, the decision of the Committee of Arbitration (or Arbitrator) in the above entitled matter, a copy of which decision is enclosed to you herewith, and

You are further notified that unless a petition for review is filed by you with the Industrial Commission within fifteen (15) days after receipt by you of this notice and copy of such decision, and agreed statement of the facts appearing upon the hearing before the Committee of Arbitration (or Arbitrator); or a correct stenographic report of the proceedings at such hearing within twenty (20) days from the receipt of this notice, then and in that event the decision of the said Arbitration Committee (or Arbitrator) shall be entered of record by this Commission as the decision of the Industrial Commission of Illinois.

You are further notified that for sufficient cause shown the Industrial Commission is authorized to grant further time in which to petition for such review or to file such agreed statement or stenographic report.

Dated ....., Illinois, this ..... day of ....., 19...

INDUSTRIAL COMMISSION OF ILLINOIS,

By .....,
[SEAL] *Secretary.*

NOTE.—See § 19 (b) of Act.

NO. 20

ILLINOIS INDUSTRIAL COMMISSION

STATE OF ILLINOIS, } ss.
..... County. }

.....
Petitioner,
v.
.....
Respondent.

PETITION FOR REVIEW OF DECISION OF THE ARBITRATOR (OR COMMITTEE OF ARBITRATION.)

Now comes ..... of ..... and respectfully petitions the Honorable Industrial Commission of the State of Illinois as follows:

That said Commission shall review the decision of the Arbitrator (or Committee of Arbitration), duly appointed according to law in the matter of ..... v. ....., which decision of said Arbitrator (or Committee of Arbitration) was filed with the Industrial Commission on the ..... day of ....., 19...

Petitioner presents herewith an agreed statement of the facts presented to said Arbitrator (or Committee of Arbitration) upon the hearing hereof (or stenographic report of proceedings, as the case may be).

Petitioner represents that the grounds upon which he presents this petition for review, are that the disability of the applicant herein has recurred (increased, diminished, or ended, as the case may be, setting out the particulars thereof).

Petitioner further represents that said decision of the Arbitrator (or Committee of Arbitration) should be reviewed by the Industrial Commission for the following additional reasons, to-wit: (set up any other proper ground for review, in accordance with § 19).

Petitioner therefore prays that proper notice in accordance with the statute may be given to the parties interested herein, and that a date may be set by the Honorable Industrial Commission for a hearing upon this petition for review, and that upon such hearing said Board may modify or vacate the order and decision of the Arbitrator (or Committee of Arbitration), as in the opinion of said Commission the facts and circumstances shall warrant.

And your petitioner will ever pray.

.....
(Employer or employee as the case may be.)
.....
.....
(Attorney for petitioner.)
.....

NOTE.—See § 19 of Act.

NO. 21

AGREED STATEMENT OF FACTS

STATE OF ILLINOIS, } ss.
..... County. }

ILLINOIS INDUSTRIAL COMMISSION

.....
Applicant,

v.

.....
Respondent.

The undersigned parties to the above entitled matter hereby submit the following as an agreed statement of facts properly authenticated by the signatures of the parties hereto, as required by Statute.

It is agreed that the facts herein appearing upon the hearing before the Arbitrator (or Committee of Arbitration), were as follows:

(Set out the facts agreed upon.)

.....

Dated at ....., ..., this ..... day of ..... 19...

.....
Applicant.

.....
Respondent.

NOTE.—Upon petition for review by the Industrial Board of the decision of the Arbitrator or Committee of Arbitration, the petition for review must be filed within fifteen (15) days after receipt of copy of such decision from the Board, and notice of its filing, and such petition for review must be supported by this agreed statement of facts, or by a correct stenographic report of the proceedings before the Arbitration Committee, which report must be filed within twenty (20) days of the filing of the decision of the Arbitrator or Committee of Arbitration.

NO. 22

ILLINOIS INDUSTRIAL COMMISSION

Decision of Industrial Commission Upon Petition for Review

STATE OF ILLINOIS, } ss.
..... County. }

.....
Petitioner,
v.
.....
Respondent.

This matter coming on to be heard before the Industrial Commission of the State of Illinois upon the petition for review of the decision of the Arbitrator (or Committee of Arbitration), filed herein on the ..... day of ....., 19.., and said Commission having considered said petition and being fully advised in the premises:

It is therefore ordered and determined by said Commission as follows: (Set out findings of the Commission on the petition.)

.....

Dated at ....., Illinois, this ..... day of ....., A. D. 19...

.....
.....
.....

[SEAL] Industrial Commission

NO. 23

ILLINOIS INDUSTRIAL COMMISSION

....., Illinois, ..., 19...

.....
Applicant,

v.

.....
Respondent.

Notice of Decision of Board on Review of Decision of the Arbitrator (or Arbitration Committee)

To .....:

.....:

You are hereby notified that the decision of the Industrial Commission of Illinois upon the petition for review of ....., of the decision of the Arbitrator (or Committee of Arbitration), in the above entitled matter, was duly filed in the office of the Industrial Commission on the ..... day of ....., 19.., a copy of which decision is enclosed to you herewith.

Dated this ..... day of ....., A. D. 19...

INDUSTRIAL COMMISSION,

By .....,

[SEAL] *Secretary.*

NO. 24

ILLINOIS INDUSTRIAL COMMISSION

.....
Petitioner,

v.

.....
Respondent.

Petition for Review of Agreement or Award

Petitioner ..... of ..... respectfully represents that on the ..... day of ....., 19.., at ....., Illinois, an agreement (or award as the case may be) was duly made in the above entitled matter of compensation due ..... from ....., growing out of an accidental injury sustained on the ..... day of ....., 19.., and arising out of and in the course of the employment of ..... as an employee of .....

Petitioner further represents that said agreement (or award as the case may be) should be reviewed by your Honorable Industrial Commission upon the ground that the disability of ..... has, subsequent to the date of said agreement (or award as the case may be), recurred (increased, diminished, or ended as the case may be).

(Allege what compensation has been paid, if any, and any other facts and circumstances proper for the Commission to consider under the statute upon petition for review.)

Petitioner therefore prays that proper notices may be given to all parties interested under this petition for review, and that this petition may be set down for hearing at some date to be fixed by your Honorable Industrial Commission, and that upon such hearing upon review, said compensation payments as fixed in said agreement (or award as the case may be) may be re-established (increased, diminished or ended, as the case may be).

And your petitioner will ever pray.

.....
Petitioner.

.....

.....
Attorney for Petitioner.

NOTE.—This petition for review may be filed with the Commission for the purpose of reviewing any agreement or award upon the ground that the disability of the employee has, subsequently to the making of such agreement or award, recurred, increased, diminished or ended. See § 19 (h.) of Act.

NO. 25

ILLINOIS INDUSTRIAL COMMISSION

.....
Petitioner,

v.

.....
Respondent.

Notice of Hearing for Review of Agreement or Award

To .....:

.....

Take notice that on the ..... day of ....., 19.., the above named ..... filed a petition for review with the Industrial Commission of an agreement (or award, as the case may be) made between .... and ....., in the above entitled matter, on the ground that the disability of said ..... has, subsequent to the making of said agreement (or award as the case may be), recurred (increased, diminished or ended, as the case may be).

You are further notified that in accordance with the rules of said Commission, your appearance and answer to said petition must be filed with said Commission on or before the ..... day of ....., A. D. 19...

Further take notice that the Industrial Commission has set said petition for review for hearing at the office of said Commission at ....., Illinois, on the ..... of ....., A. D. 19.., at ..... o'clock .. M., at which time and place you may appear and present such evidence as may be relevant to such inquiry upon review.

Dated ....., Illinois, this ..... day of ....., A. D. 19...

INDUSTRIAL COMMISSION,
By .....,
Secretary.

[SEAL]

NOTE.—The above notice of petition for review must be given by the Industrial Commission to all parties in interest fifteen days prior to the hearing, and in addition the employee, upon such petition being filed by said employer, shall be entitled to one day's notice for each one hundred miles necessary to be traveled by him in attending the hearing, and three days in addition thereto. See § 19 (h.) of Act.

NO. 26

ILLINOIS INDUSTRIAL COMMISSION

Stipulation and Waiver of Arbitration

.....

Applicant,

v.

.....

Respondent.

The facts in this case being undisputed and the only matter in difference between the parties hereto being the construction and application to said facts of the Illinois Workmen's Compensation Law (Laws 1919, p. 538), and the parties hereto desiring to obtain a decision of said matter by the full board without resorting to arbitration, do hereby stipulate and agree as follows:

1. That the accident to the employee, upon which the claim for compensation in this cause is based, occurred on the ..... day of ....., 19.., in the town (or city) of ....., county of ....., State of Illinois, and that the same arose out of and in the course of his employment. That the character and nature of the injury and the result thereof is as follows;

.....

(State in detail the nature of the injury, disability or death resulting, etc.)

2. That the facts relating to the wages of ..... said employee are as follows: .....

(If the average wage is undisputed, so state; if disputed, state all material facts relating to same .....)

3. The other material facts in said cause not included in paragraphs 1 and 2 are as follows: .....

4. That the arbitration of the matters in difference between the parties hereto, before an Arbitrator or an Arbitration Committee, provided for in said Workmen's Compensation law, be and the same is hereby waived, and the decision of said matters is hereby submitted to the Industrial Commission, sitting as a full Commission, the same as if this cause had proceeded to arbitration under said law, and the decision on arbitration therein had been appealed from and said cause thereby brought before the full board on appeal from such decision. It is further stipulated and agreed that the decision of said Commission in this cause pursuant to this stipulation, and based upon the facts set forth herein shall be valid and binding, and shall have the same validity, force and effect as if said cause had proceeded to arbitration in due course, and was brought before the full Commission on appeal duly taken from the decision of an arbitrator or an arbitration committee therein.

In witness whereof the parties have signed this stipulation at ...., in the county of ....., State of Illinois, this ..... day of ....., 19...

.....

Applicant.

.....

Respondent.

Signed in presence of

.....

.....

STATE OF ILLINOIS, }
..... County. } ss.

On this ..... day of ....., 19.., before me ....., a notary public in and for said county personally appeared ..... known to me to be the persons described in and who signed the foregoing stipulation, and acknowledged that they signed the same as their free act and deed. And I further certify that I read over all of said stipulation to said persons, and fully acquainted them with the contents thereof before the same was acknowledged and signed by them.

Witness my hand and ..... seal, this.....day of.....19....

.....
Notary Public.

STATE OF ILLINOIS, }
..... County. } ss.

On this ..... day of ....., 19.., before me ....., a notary public in and for said county personally appeared ..... known to me to be the person who signed the foregoing stipulation on behalf of ....., the employer therein mentioned, and acknowledged that he executed the same on behalf of said ....., being duly authorized so to do, and that the same is his free act and deed as ..... for said employer.

(State position or office.)

Witness my hand and ..... seal, this.....day of.....19....

.....
Notary Public.

NO. 27

NOTICE OF PETITION FOR A LUMP SUM

STATE OF ILLINOIS, } ss.
..... County. }

Before the Industrial Commission of Illinois

.....
Petitioner,
v.
.....
Respondent.

To .....:
.....

You are hereby notified that a petition has been filed with the Industrial Commission by ....., of ....., praying for a commutation of the compensation now due and to become due ....., of ....., by reason of an accidental injury alleged to have been sustained on the ..... day of ....., 19.., such commutation to be an amount which will equal the total sum of the probable future payments, capitalized at their present value upon the basis of interest calculated at 3% per annum with annual rests.

You are further notified that if you desire to appear to or answer said petition, you are required by the rules of the Industrial Commission to do so by the ..... day of ....., 19.., and that unless you are further notified, a hearing will be held in the offices of the Industrial Commission, at ....., Illinois, on said petition on the ..... day of ....., 19.., at .. M., at which time and place you may appear and present any evidence or argument relevant to the inquiry to be made by said Commission on said petition.

Dated, ..., Illinois, this ..... day of ....., 19...
INDUSTRIAL COMMISSION OF ILLINOIS,
By .....,
Its Secretary.

[SEAL]

NOTE.—This notice must be given "to the interested parties," by the Commission, upon application for lump sum. § 9 of Act.

NO. 28

EMPLOYEE'S OR BENEFICIARY'S PETITION FOR LUMP SUM

STATE OF ILLINOIS, } ss.
..... County. }

Before the Industrial Commission of Illinois

.....

Petitioner,

v.

.....

Respondent.

Now comes ....., petitioner herein, and respectfully represents that ..he is (or in death cases say, the deceased employee was) and was on the ..... day of ....., 19.., an employee in the service of ....., an employer at ....., Illinois; that both said employer and petitioner (or in death cases say, said deceased employee) were working under and subject to the provisions of the Workmen's Compensation Act (Laws of Illinois, 1919, page 538), and that on to-wit: the ..... day of ....., 19.., petitioner (or, in death cases say, said deceased employee) was accidentally injured (and, in death cases add: "as a result of which, said employee died"), which injury was (state nature thereof), and that it arose out of and in the course of the said employment.

Petitioner further shows that said employer has paid compensation on account of said injury (or death), as follows: (State what has been paid, and in what installments; and if no compensation has been paid, so state.)

(In death cases add: Petitioner further shows that ..he is a dependent of said employee, in this, that ..he is the surviving widow (child, children, as the case may be) with whom said employee lived at the time of his death, and whom he was under legal obligations to support; or in case of parents, grandparents, or other lineal heirs, state that said employee contributed to petitioner's support within four years previous to the time of said injury; if the petition is presented by an administrator or executor, allege that petitioner is the duly qualified and acting administrator or executor, as the case may be, of said deceased employee.)

Petitioner further shows that ..he believes it to be to the best interest of the parties that compensation now due and to become due be paid in a lump sum, for the following reasons: (Set them out, showing necessity for such payment, and proper anticipated use of the money, etc.).

Petitioner therefore respectfully prays that proper notices may be given to the interested parties, and particularly to said employer, ..., at ....., Illinois, and that a hearing may be had at some day to be fixed by your Honorable Commission, and that upon such hearing said Commission may order the commutation of the compensation to an equivalent lump sum, equal to the total sum of the probable future payments capitalized at their present value upon a three per cent basis, with annual rests, in accordance with the provisions of said Workmen's Compensation Act,

which sum, so commuted, your petitioner represents now amounts to $.....

And your petitioner will ever pray.

.....

Petitioner.

P. O. address.....

.....

Attorney for Petitioner.

NOTE.—The same form may be used for a petition by the employer, making the necessary changes in the language. See § 9 of Act. For tables computing present value of lump sum settlements, see *ante* p .....

NO. 29

PETITION FOR LUMP SUM

ANSWER

STATE OF ILLINOIS, } ss.
..... County. }

Before the Industrial Commission of Illinois

.....
Petitioner,

v.

.....
Respondent.

Now comes ....., respondent herein, and for answer to the petition of ..... herein, praying for a lump sum settlement of claim for compensation arising out of the alleged accidental injury sustained by ..... on the ..... day of ....., says:

(Admit such facts as are not controverted and deny those allegations which are controverted.)

.....

Respondent further answering says that ..... believes that it is not for the best interests of the parties that the compensation, if any, which is now due or which is to become due on account of said alleged accidental injury be paid in a lump sum, for the following reasons, to-wit:

(Set out reasons, showing no necessity for such payment, liability to waste, etc.)

.....

Respondent therefore prays that said alleged compensation now due and to become due be not ordered paid in a lump sum, and that said petition may be dismissed.

.....
Respondent.

P. O. address.....

.....
Attorney for Respondent.

NO. 30

PETITION FOR LUMP SUM

ORDER

STATE OF ILLINOIS, } ss.
..... County. }

Before the Industrial Commission of Illinois

.....
Petitioner,
v.
.....
Respondent.

A petition for the payment of a lump sum having been filed with the Industrial Commission in the above entitled matter on the ..... day of ....., 19.., and thereafter said Commission having given proper notice to the interested parties, and said matter now coming on to be heard, pursuant to said notice before this Commission, after hearing the proofs and allegations of the said petitioner and said respondent, and having made careful inquiry and investigation of said matter, and being fully advised in the premises.

It is ordered, adjudged and decreed by the Industrial Commission as follows:

(Insert findings as to whether petition is allowed or disallowed and dismissed, with a recital that it is or is not, as the case may be, to the best interests of the party that compensation be paid in a lump sum.)

.....

(In case the petition is allowed the order should conclude as follows):

It is further ordered, adjudged and decreed that this order for a commutation of compensation herein to the lump sum of ..... dollars ($.....) shall be binding and conclusive upon the parties hereto, except such parties, or either of them, reject the same within ten (10) days after notice of this award, by filing a written rejection thereof with the Industrial Commission, in which event the compensation herein shall be payable in installments as provided by § 9, of the Workmen's Compensation Act.

.....
.....
.....
.....
.....
Industrial Commission of the State of Illinois.

NOTE.—See § 9 of Act.

NO. 31

PETITION FOR A LUMP SUM

NOTICE OF AWARD

STATE OF ILLINOIS, } ss.
..... County. }

Before the Industrial Commission of Illinois

.....
Petitioner,
v.
.....
Respondent.

To .....:
.....:

Take notice that on the ..... day of ....., 19.., the Industrial Commission of the State of Illinois entered an order in the above entitled matter, providing for a commutation of the compensation due and to become due herein to an equivalent lump sum, equal to the total sum of the probable future payments of such compensation capitalized at their present value upon the basis of interest at three (3%) per cent per annum with annual rests, amounting to ..... dollars ($.....), it appearing to the said Industrial Commission to be for the best interests of the parties hereto that such compensation be so paid in a lump sum.

Further take notice that said order for a lump sum settlement will become binding and conclusive upon all parties interested therein unless writttn rejection thereof is filed with the Industrial Commission, at ...., Illinois, within ten (10) days from this date.

Dated ....., Illinois, ..., 19..

INDUSTRIAL COMMISSION OF ILLINOIS,
By .....,
[SEAL] *Secretary.*

NOTE.—The Industrial Commission must give the parties notice of any award, and either party has ten days thereafter to reject it if it is unsatisfactory. See § 9 of Act.

NO. 32

PETITION FOR A LUMP SUM

REJECTION NOTICE

STATE OF ILLINOIS, } ss.
..... County. }

Before the Industrial Commission of Illinois

.....
Petitioner,
v.
.....
Respondent.

To the Industrial Commission of Illinois:

The undersigned hereby rejects the award of lump sum compensation made and entered on the ..... day of ....., 19.., by the Industrial Commission in the above entitled matter.

Dated ....., 19...

.....
P. O. address.....

NOTE.—This notice must be filed with the Industrial Commission within ten (10) days after notice of the Commission award.

NO. 33

ILLINOIS INDUSTRIAL COMMISSION

.....
Applicant,

v.

.....
Respondent.

MEMORANDUM OF NAMES AND ADDRESSES FOR SERVICE OF NOTICES

Name .....
Address .....
Name of Agent.....
Address .....

The undersigned hereby requests that the Industrial Commission file this memorandum in the above entitled matter, and that all notices of proceedings in the above entitled matter be served personally, or by registered mail, upon the undersigned, in accordance with the information given on this memorandum.

Dated this ..... day of ....., 19...

.....

NOTE.—"Each party upon taking any proceedings or steps whatsoever before any arbitrator or committee of arbitration, Industrial Commission or court shall file with the Industrial Commission his address, or the name and address of an agent upon whom all notices * * * shall be served * * * in the event such party has not filed his address or the name and address of an agent as above provided, service of any notice may be had by filing such notice with the Industrial Commission." § 19 (i) of the Act.

NO. 34

ILLINOIS INDUSTRIAL COMMISSION

.....
Applicant,
v.
.....
Respondent.

NOTICE OF APPLICATION FOR JUDGMENT

To .....
Employer.
.....

You are hereby notified that on the ..... day of .....19.., at ..... o'clock, .. M., the undersigned applicant will appear before the honorable ..... court of ..... County, Illinois, in the room usually occupied by said court at ....., and will then and there apply for the entry of a judgment in favor of the applicant upon the award heretofore made and entered in the above entitled matter by the Industrial Commission of the State of Illinois, in accordance with the statute in such case made and provided, at which time and place you may appear if you so wish.

Dated at ..... this ..... day of ....., 19...

.....
Applicant.

Received a copy of the above notice this ..... day of ....., 19...

.....
Respondent.

NOTE.—Where application is made for judgment in the Circuit Court upon an award entered by the Industrial Commission, this notice must be served fifteen days in advance of such application. See § 19 (g) of Act.

NO. 35

ILLINOIS INDUSTRIAL COMMISSION

.....
Applicant,
v.
.....
Respondent.

JUDGMENT STAY-BOND UPON PETITION FOR REVIEW

Know all men by these presents, that, we ..... and ..... (here insert name of surety) of ..... County, in the State of Illinois, are held and firmly bound unto ....., of ....., in the penal sum of (here state an amount double the amount of the award) lawful money of the United States, for the payment of which well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly by these presents.

Witness our hands and seals this ..... day of ....., 19...

The condition of the above obligation is such that whereas the said ..... did on the ..... day of ....., 19.., before the Industrial Commission of the State of Illinois, secure an award against the above bounden ..... for payment of compensation (if the award is upon the decision of the Arbitrator or a Committee of Arbitration, so state), such compensation and the payment thereof to be as follows, to-wit: .....
(Here insert amount of compensation and manner of payment as provided in the award.)

And whereas the said ..... has filed notice with the Industrial Commission of the State of Illinois of application for the entry of judgment in the Circuit Court of ..... County, upon said award, in accordance with the statute.

And whereas it is the desire of the above bounden ..... to file and prosecute proceedings for review by the Industrial Commission of said award, in accordance with the statute.

Now therefore, if the said above bounden ..... shall duly prosecute with effect said proceedings for review before said Industrial Commission, and moreover, pay the amount of said award with costs and interest entered and to be entered against him in case said award is upheld and affirmed upon review by said Industrial Commission, then the above obligation to be void, otherwise to remain in full force and virtue.

.....[SEAL]
.....[SEAL]

Approved this ..... day of ....., 19...
INDUSTRIAL COMMISSION OF ILLINOIS,
By .....,
Member of Commission.

NOTE.—The above bond must be executed and filed with the Industrial Commission if the employer is notified of application for judgment in the Circuit Court upon an award and desires to stay the entry of such judgment, for the purpose of prosecuting proceedings for review before the Commission. See § 19 (g) of Act.

NO. 36

ILLINOIS INDUSTRIAL COMMISSION

.....
Applicant,
v.
.....
Respondent.

CERTIFICATE OF FILING STAY-BOND

This is to certify that the above named ....., respondent, against whom a decision and award was made and entered in the above entitled matter on the ..... day of ....., 19.., upon which notice of application for judgment has been filed by ....., applicant, with the Industrial Commission of Illinois, on the ..... day of ....., 19.., filed his bond with good and sufficient surety in double the amount of said award, conditioned upon the payment of said award in the event said ..... respondent should fail to prosecute with effect proceedings for review of said decision and award, or that said decision or award upon review should be affirmed, which said bond has been approved by the Industrial Commission.

Dated ....., Illinois, this ..... day of ....., 19...

INDUSTRIAL COMMISSION,
By .....,
[SEAL] *Secretary.*

NOTE.—This certificate should be presented to the Circuit Court if a stay of judgment is desired.

NO. 37

ILLINOIS INDUSTRIAL COMMISSION

DEMAND FOR SECURITY FOR PAYMENT OF COMPENSATION

....., 19...

To .....:
(Name of employer.)

.....:
(Address.)

Demand is hereby made upon you under the authority given the Industrial Commission of Illinois, by § 26 of an Act entitled: "An Act to promote the general welfare of the people of this State by providing compensation for accidental injuries or death suffered in the course of employment within this State; providing for the enforcement and administering thereof, and a penalty for its violation, and repealing an Act entitled, 'An Act to promote the general welfare of the people of this State by providing compensation for accidental injuries or death suffered in the course of employment,' approved June 10, 1911, in force May 1, 1912,'' approved June 28, 1913, in force July 1, 1913, as amended by Act in force July 1, 1919.

That within ten days of the receipt by you of this written notice, you either:

1. File with the Industrial Commission a sworn statement, showing your financial ability to pay compensation provided for in said Act, normally required to be paid; or,

2. Furnish security, indemnity or a bond guaranteeing the payment by you of the compensation provided for in said Act, normally required to be paid; or,

3. Insure to a reasonable amount your liability to pay compensation in some corporation or organization authorized, licensed or permitted to do such insurance business in this State.

4. Make some other provision satisfactory to the Industrial Commission for the securing of the payment of compensation provided for in said Act.

Your are further notified that you are required by the provisions of said Act to furnish the Industrial Commission at ....., Illinois, within ten days of the receipt of this written demand and notice, evidence of your compliance with one of the above four alternatives, and that the steps taken by you pursuant to this notice and demand for compliance with the requirements of said Act as above stated, shall be subject to the approval of the Industrial Commission.

You are further notified that if one or more of the above named four alternatives are not complied with by you within ten days of the receipt of this demand and notice, or if such compliance on your part shall not be approved by the Industrial Commission, and you fail properly to comply with this written demand within ten days after the receipt by you of written notice of non-approval, then and in such case, you shall be liable as for a misdemeanor and shall be subject to a fine equal to ten cents per employee for each day of such failure or neglect, not exceeding $50.00.

Prompt compliance with the above demand is respectfully urged.

Dated at ....., Illinois, this ..... day of ....., A. D. 19.....

INDUSTRIAL COMMISSION,

[SEAL] By .....,

Member of Commission.

NOTE.—See § 26 of the Act.

NO. 38.

ILLINOIS INDUSTRIAL COMMISSION

NOTICE OF APPROVAL OF COMPENSATION SECURITY

To .....:
(Name of employer.)
.....:
(Address.)

You are hereby notified that the Industrial Commission has approved your compliance with § 26 of the Workmen's Compensation Act (Laws 1919, p. 538), upon written demand of this Commission made upon you, in accordance with the provisions of said Act, upon the ..... day of ....., A. D. 19...

Dated at ....., Illinois, ..., 19...

INDUSTRIAL COMMISSION,
By .....,
Secretary.

[SEAL]

NO. 39

ILLINOIS INDUSTRIAL COMMISSION

NOTICE OF NON-APPROVAL OF COMPENSATION SECURITY

To ....:.....:
(Name of employer.)
.....:
(Address.)

You are hereby notified that the Industrial Commission has refused to approve your attempted compliance with § 26 of the Workmen's Compensation Act (Laws Ill. 1919, p. 538), upon written demand of this Commission made upon you, for the following reasons, to-wit:

(Set forth reasons for the insufficiency of such compliance.)

You are further notified that it becomes your duty to properly comply with the provisions of said Act, as outlined in said demand heretofore made upon you by this Commission, within ten days after the receipt by you of this notice of non-approval.

In default of which you will be liable to a penalty in a sum equal to ten cents for each of your employees, for each day of non-compliance, not exceeding $50.00 per day and not less than $1.00 per day, in accordance with the provisions of said Act.

Prompt compliance with this notice is respectfully urged.

Dated ....., Illinois, ..., 19..

INDUSTRIAL COMMISSION,
By .....,
Secretary.

[SEAL]

NO. 40

ILLINOIS INDUSTRIAL COMMISSION

NOTICE TO EMPLOYER OF ACCIDENTAL INJURY AND CLAIM FOR COMPENSATION THEREFOR

To .....:
(Write name of employer here.)
.....:
(Write address of employer here.)

You will take notice that the undersigned was on the ..... day of ....., A. D. 19.., injured by an accident arising out of and in the course of his employment, while employed by you at ....., Illinois.

Name of employee .....
Post office address .....
Relationship to claimant .....
(State whether notice given by injured person or by dependent.)
Claim for compensation is for.....
Cause of the accident .....
.....
Nature of the injury is as follows.....
.....
(Signed:) .....

NOTE.—This notice must be filled out by the injured workman or someone in his behalf, or in case of his death, by a dependent or dependents, or someone in their behalf. It should be served upon the employer as soon as practicable after the accident, and not later, in any event, than thirty days thereafter. See § 24 of Act.

NO. 41

NOTICE OF CLAIM FOR PARTIAL PERMANENT DISABILITY AFTER RETURN TO WORK

To the Industrial Commission of Illinois:

Take notice that the undersigned, an employee in the service of....., an employer engaged in the business of ....., at ....., Illinois, was accidentally injured in the course of such employment, on the ..... day of ....., 19.., at the ..... of said employer, at ....., Illinois; that the cause of said accident was....., and the nature of the injury is..... on account of which the undersigned employee is partially though permanently incapacitated from pursuing his usual and customary line of employment; that on the ..... day of ....., 19.., the undersigned employee returned to the employment of said employer....., in whose service he was injured as aforesaid.

Further take notice that the undersigned employee hereby makes formal claim for compensation against said employer..... for $....., being ..... weeks (..... days), at $..... per week (or .....day), on account of said accidental injury, of ....., 19.., and the Industrial Commission is hereby requested to immediately send a copy of this notice by registered mail to said employer, ..., at ....., at provided by § 24 of the Workmen's Compensation Act, Laws of Illinios, 1919, page 538.

Dated ....., 19...

.....
(Employee)

P. O. address.....

NOTE.—This notice must be filed with the Industrial Commission in cases where claim is made for compensation for partial though permanent incapacity, where the employee returns to work for the same employer in whose service he was injured. This notice must be so filed within 18 months after the return to such employment. See § 8 (d) and § 24 of the Act.

NO. 42

SETTLEMENT RECEIPT

Received of ..... (name of employer) the sum of ..... dollars and ..... cents, making in all, with weekly payments already received by me, the total sum of ..... dollars and ..... cents, in settlement of compensation under the Illinois Workmen's Compensation Law, for all injuries received by me on or about the ..... day of ....., 19.., while in the employ of .....
.....

(Name of employer, city or town, street and number)

subject to review by the Industrial Commission, as provided by law.

Witness my hand this ..... day of ....., 19...

Witness .....

.....
(Name of employee)

Address .....

.....
(Street and number)

.....
(City or town)

NO. 43

RECEIPT ON ACCOUNT OF COMPENSATION

Received of ..... (name of employer) the sum of ..... dollars and ..... cents being the proportion of my weekly wages from the ..... day of ....., 19.., to the ..... day of ....., 19.., under the Illinois Workmen's Compensation Act, subject to review by the Industrial Commission as provided by law, said accident occurring on the ..... day of ....., 19.., while in the employ of .....

Date.....

$.....

.....
(Name of employee)

.....
(Street and number)

.....
(City or town)

NO. 44

GENERAL RELEASE

Know all men by these presents, That I, ... of ....., in the county of ....., in the State of Illinois, have received of ....., the sum of ..... dollars ($.....) in full payment, satisfaction, compensation and indemnity, for all injuries, loss or damage by me sustained or suffered, in mind, body or estate, having especial reference to the injuries hereinafter described, but hereby expressly including all other loss, incapacities or injuries by me suffered, claimed to have been occasioned by an accident which occurred on the ..... day of ....., A. D. 19.., at ..... (where accident occurred) in the town of ....., in the county of ....., and State of Illinois, by which I sustained the following injury: .... and by which I was otherwise hurt and injured.

And in consideration of the prompt payment of said sum of money and the further consideration of the compromise and settlement without suit, or proceedings of any kind, of my claim, by me made against said ...., I, the said ....., for myself, my heirs, executors and administrators, do hereby forever release and hold harmless the said ..... of and from any and all rights of action, claims of compensation for disability, incapacity, disfigurement, and medical, surgical and hospital service and expense in connection with said injury, and all other claims, demands or liability in any way arising out of, or which in any manner hereafter may arise out of or result from, said accident for injuries occasioned, loss of time, loss of service, loss of property, loss of earning capacity, moneys expended, or liability incurred and any and all claims, demands or liability, of whatever nature, for or on account of any act or thing done or omitted to be done by said ....., officers, agents, servants, or employees, or any one of them, in its behalf; including all claims or demands due or which may or might become due under the Workmen's Compensation Act, 1913. (Laws Ill., 1919, p. 538.)

I further represent and covenant that at the time of receiving said payment and signing and sealing this Release, I am of lawful age and legally competent to execute it, and that before signing and sealing the same, I have fully informed my self of its contents and executed it with full knowledge thereof, including the knowledge that I sign away all right to begin any suit proceeding or action arising by reason of injuries sustained in said accident, whether such injuries exist now or shall develop hereafter.

Witness my hand and seal this ..... day of ....., A. D. 19... ..... [SEAL]

Witnesses:

.....

.....

STATE OF ILLINOIS, } ss.
County of ..... }

Personally appeared before me this ..... day of ....., A. D. 19.., ..., to me known to be the person who executed the within Release, and acknowledged same to be his free act and deed; and I certify that before the execution thereof, the foregoing Release was read over and fully explained to the same person by me, and that he declared before execution thereof that he fully understood the same.

Witness my hand and ..... seal, this day of ....., 19...

.....
(Notary Public)

Translation Certificate.

I, ..., do hereby certify that I have translated the foregoing Release from the English to the ..... language, to the within named ....., and that he signed the same with a full understanding of its contents and legal effect.

.....

NO. 45

ILLINOIS INDUSTRIAL COMMISSION

REPORT OF ACCIDENT

Employer's name ..... Business .....
Main Office: Street and No. ..... City or Town .....
City or town in which accident happened .....
Employee's name ..... Street and No. .....
City or town .....
Sex .....; Age .....; Married or single .....; American or foreign born ..... Occupation when injured (machinist, carpenter, laborer, etc.) ..... Wages .....
Date of Accident ..... o'clock .....M.
Direct cause of injury .....
.....
Nature of Accident (describe fully): .....
.....
.....
If non-fatal, the length of disability: .....
.....
If fatal, date of employee's death .....
If fatal, length of disability before death .....
If fatal number of persons dependent upon the deceased.....
Name and P. O. address of a relative or friend of the deceased.....
.....
Attending physician, surgeon or hospital .....
Amount paid ..... By whom .....
Amount paid for funeral or burial expenses, if known: .....
Has compensation been paid? ..... To whom ..... Amount .....
Date of report ..... Made out by .....
(If not a member of firm, state position)
.....

NOTE.—This report must be sent to the Industrial Commission by the employer immediately after the accident and the same report must be renewed monthly by the employer between the 15th and 25th of each month in those cases which entail a loss to the employer of more than one week's time.

See § 30 of the Act.

NO. 46

ILLINOIS INDUSTRIAL COMMISSION

Report of Permanent Disability

The undersigned hereby reports accidental injury in which permanent disability has resulted to the employee as follows:

Employer's name ..... Business.....
Main Office: Street and No. ..... City or Town .....
City or town in which accident happened .....
Employee's name ..... Street and No. .....
City or town .....
Sex .....; Age .....; Married or single .....; American or foreign born ..... Occupation when injured (machinist, carpenter, laborer, etc.) ..... Wages .....
Date of Accident ..... o'clock .....M.
Direct cause of injury .....
.....
Nature of Accident (describe fully): .....
.....
.....
The length of disability: .....
Permanent disability of employee resulted or will result on ..... 19...
.....
Attending physician, surgeon or hospital .....
Amount paid ..... By whom .....
Has compensation been paid ..... To whom ..... Amount .....
Date of report ..... Made out by .....
(If not a member of firm, state position)
.....

NOTE.—The above additional report must be made by the employer to the Industrial Commission in case of any injury which results in permanent disability upon the date when it is determined that such permanent disability has resulted or will result from such injury. See § 30 of Act.

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